G. S—

A TREATISE OF The Principal Grounds and Maxims OF THE LAWS OF *This Nation.*

Very useful and commodious for all Students, and such others as desire the knowledge and understanding of the Laws.

Written by that most excellent and Learned Expositor of the Law, W. Noy, *of Lincolns Inn, Esquire.*

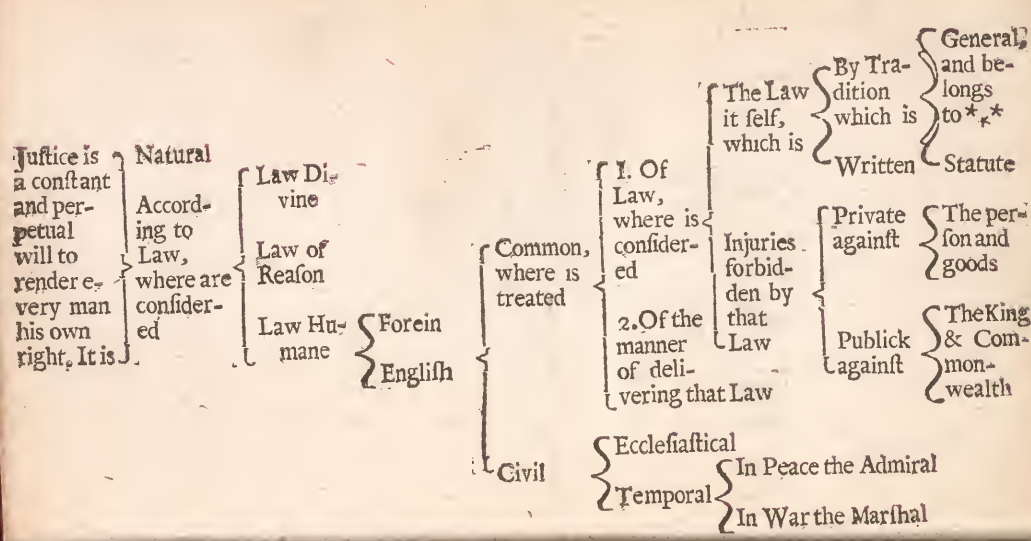
Lex plus laudatur quando ratione probator.

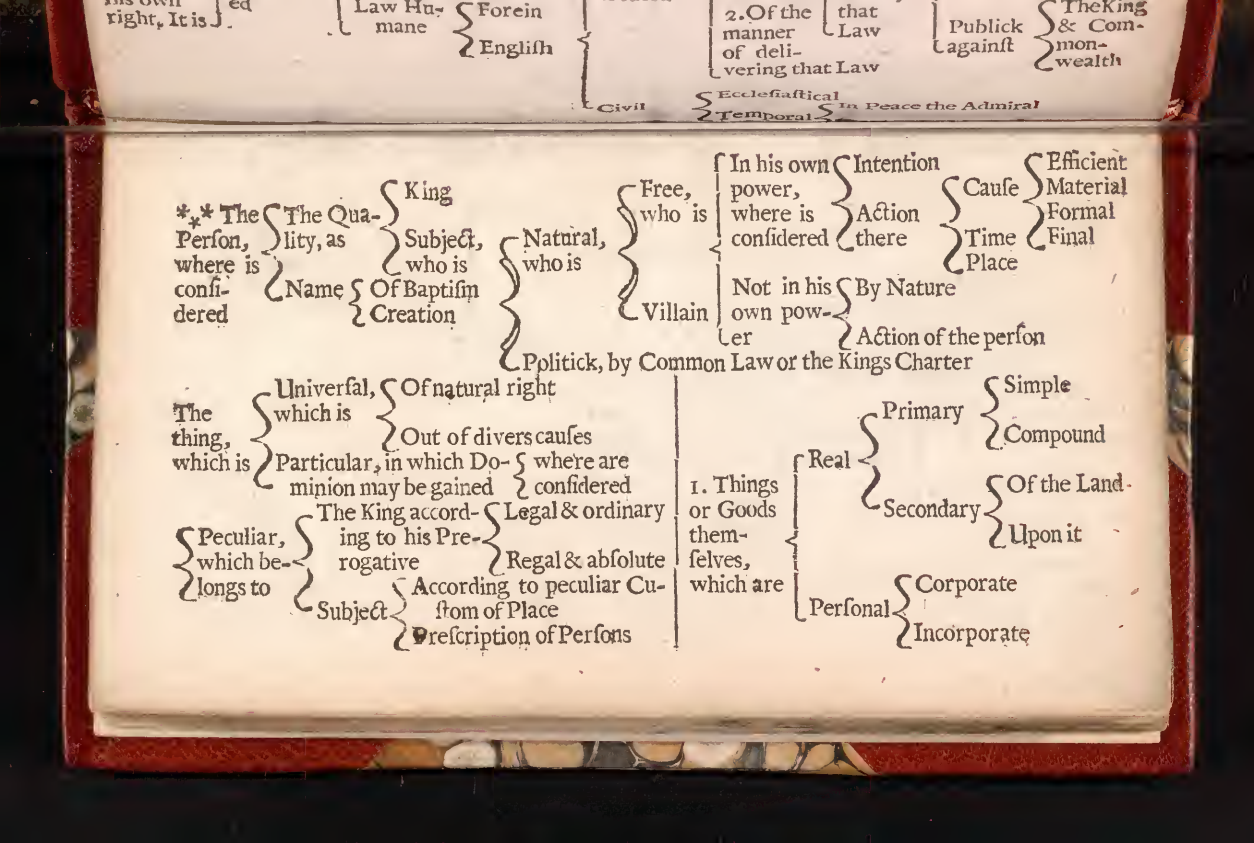
The Fourth Edition.

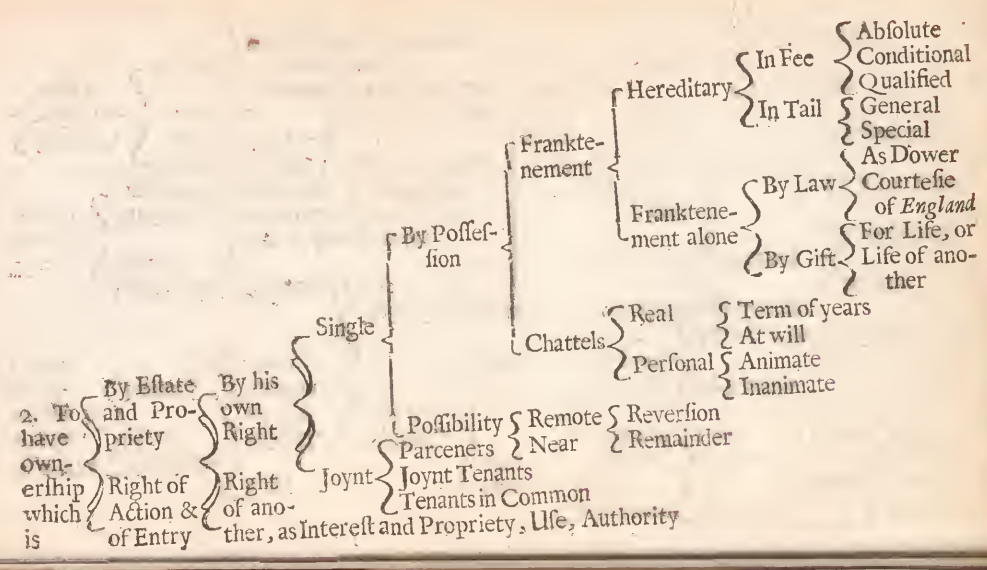
London, Printed by *G. Sawbridge, W. Rawlins,* and *T. Roycrof, Assigns of Richard* and *Edward Atkins Esquires.* for *H. Twiford, T. Collins, T. Basset, J. Wright, M. Pitts, C. Harper, T. Sawbridge J. Place, T. Lee,* 1677.

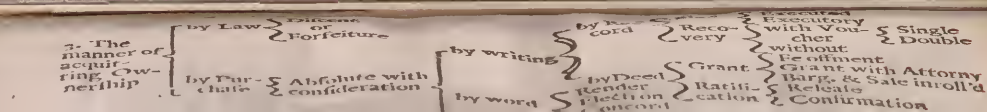
AN ANALYSIS OF THE LAWS of *England*.

By the Honourable and most Learned, *WILLIAM NOY*, Esq; Attorney General, and of the Privy Council to King *Charles* I.


Juſtice is a conſtant and perpetual will to render every man his own right. It is
Natural
According to Law, where are conſidered
Law Divine
Law of Reaſon
Law Humane
Forein
Engliſh
Common, where is treated
Civil
1. Of Law, where is conſidered
2. Of the manner of delivering that Law
Eccleſiaſtical
Temporal
In Peace the Admiral
In War the Marſhal
The Law it ſelf, which is
Injuries forbidden by that Law
By Tradition which is
Written
General, and belongs to * * *
Statute
Private againſt
Publick againſt
The perſon and goods
The King & Commonwealth


, The Person, where is considered
The Quality, as
Name
King
Subject, who is
Of Baptism
Creation
Natural, who is
Politick, by Common Law or the Kings Charter
Free, who is
Villain
In his own power, where is considered
Not in his own power
Intention
Action there
By Nature
Action of the person
Cause
Time
Place
Efficient
Material
Formal
Final
The thing, which is
Universal, which is
Particular, in which Dominion may be gained
Of natural right
Out of divers causes
where are considered
Peculiar, which belongs to
The King according to his Prerogative
Subject
Legal & ordinary
Regal & absolute
According to peculiar Custom of Place
Prescription of Persons
1. Things or Goods themselves, which are
Real
Personal
Primary
Secondary
Simple
Compound
Of the Land
Upon it
Corporate
Incorporate

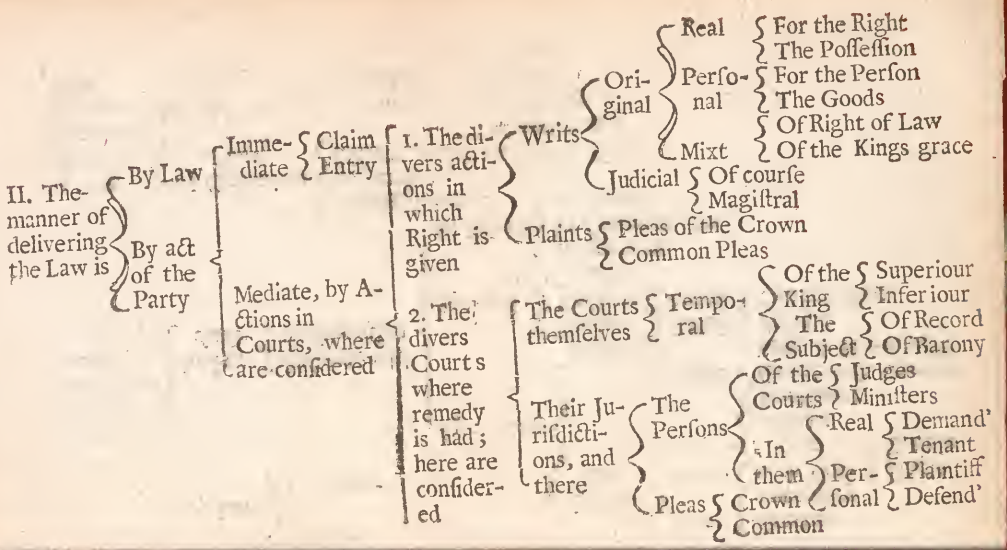

2. To have ownerſhip which is
By Eſtate and Propriety
Right of Action & of Entry
By his own Right
Right of another, as
Single
Joynt
By Poſſeſſion
Poſſibility
Parceners
Joynt Tenants
Tenants in Common
Remote
Near
Reverſion
Remainder
Intereſt and Propriety, Uſe, Authority
Frankte-nement
Chattels
Hereditary
Franktene-ment alone
In Fee
In Tail
By Law
By Gift
Real
Perſonal
Abſolute
Conditional
Qualified
General
Special
As Dower
Courteſie of England
For Life, or Life of another
Term of years
At will
Animate
Inanimate


3. The manner of acquiring Ownerſhip
by Law
Diſcent or Forfeiture
by Purchaſe
Abſolute with conſideration
by writing
by word
by Record
by Deed
by Render
Election
Recovery
Grant
Ratification
Executory
Executed
with Voucher
without
Single
Double
Feoffment
Grant with Attorny
Barg. & Sale inroll'd
Releaſe
Confirmation

- 2. To have ownership
  - By Estate and Propriety
    - By his own Right
    - Single
    - Joynt
      - Possibility
        - Remote
          - Reversion
          - Remainder
        - Near
      - Parceners
      - Joynt Tenants
      - Tenants in Common
  - Right of which Action &
    - Right of
    - Chattels
      - Real
        - Term of years
        - At will
      - Personal
        - Animate
        - Inanimate

- 3. The manner of acquitting Ownership
  - by Law
    - Discent
    - or
    - Forfeiture
  - by Purchase
    - Absolute with consideration
      - by writing
        - by Record
          - Fine
            - Executed
            - Executory
          - Recovery
            - with Voucher
              - Single
              - Double
            - without
        - byDeed
          - Grant
            - Feoffment
            - Grant with Attorny
            - Barg. & Sale inroll'd
          - Ratification
            - Release
            - Confirmation
      - by word
        - Render
        - Election
        - Concord
        - Assignment
      - by Devise
        - by Common Law
        - by Statute

- 4. The manner admitting Ownership
  - by Operation of Law
    - Extinguishment
    - Suspension
    - Discent, which takes away Entry
  - by Act of the Party
    - Commission
      - Discontinuance
      - VVarranty
    - Omission
      - Estopple
      - Forfeiture


II. The manner of delivering the Law is
By Law
By act of the Party
Immediate
Claim
Entry
Mediate, by Actions in Courts, where are considered
1. The divers actions in which Right is given
Writs
Original
Real
For the Right
The Possession
Personal
For the Person
The Goods
Mixt
Of Right of Law
Of the Kings grace
Judicial
Of course
Magistral
Plaints
Pleas of the Crown
Common Pleas
2. The divers Courts where remedy is had; here are considered
The Courts themselves
Temporal
Of the King
Superiour
Inferiour
The Subject
Of Record
Of Barony
Their Jurisdictions, and there
The Persons
Of the Courts
Judges
Ministers
In them
Real
Demand'
Tenant
Personal
Plaintiff
Defend'
Pleas
Crown
Common

- Courts, where are considered
- 2. The divers Court s where remedy is had s here are considered
  - The Courts themselves
    - Temporal
      - The Subject
        - Of Record
        - Of Barony
    - Spiritual
  - Their Jurisdictions, and there
    - The Persons
      - Of the Courts
        - Judges
        - Ministers
      - In them
        - Crown
        - Real
          - Demand'
          - Tenant
        - Personal
          - Plaintiff
          - Defend'
    - Pleas

3. The manner of Prosecution in Courts
   - Direct
     - By Process
     - By pleading with that
       - Plea
       - Trial
       - Judgment
       - Execution
   - Collateral
     - By the Court-adjornment
     - By Persons in the Court, as Essoin
4. The manner of Defeating the Process
   - By Prohibition
   - Assignation of Errors
5. The manner of taking away the Punishment
   - Flight
   - Pardon

The Laws of England *are threefold, Common Laws, Customs, and Statutes.*

CHAP. I.
The COMMON LAW.

THE Common Law is grounded on the Rules of Reason, and therefore we use to say in Argument, That Reason will that such thing be done, or that Reason will not that such a thing be done. The Rules of Reason are of two sorts, some taken from Learning as well Divine as Human, and some proper to it self onely.

Of THEOLOGY.

1.

Summa ratio est quæ pro Religione facit.

A Tenure to find a Preacher, if the Lord purchase parcel of the Land, yet the whole service remaineth, because it is for the advancement of Religion.

2.

Dies Dominicus non est Juridicus.

Sale on a Sunday shall not be said Sale in a market, to alter the property of the Goods.

Of GRAMMAR.

Of Grammar the Rules are infinite in the Etymology of a Word, and in the construction thereof what is nature is single.

3.

Ad proximum antecedens fiat relatio, nisi impediatur sententia.

As an Indictment against *J. S.* servant to *J. D.* in the County of *Midd.* Butcher, &c. is not good; for Servant is no addition, and Butcher shall be referred to *J. D.* which is the next antecedent.

Of LOGICK.

4.

Cessante causâ cessat effectus.

The Executor, nor the husband, after the death of a woman guardian in Soccage, shall not have the wardship, because (*viz.*) the natural affection is removed which was the cause thereof.

Some

Some things shall be construed according to the original cause thereof.

5.

The Executor may release before the Probate of the Will, because his title and interest is by the Will, and not by the Probate.

To make a man swear to bring me money upon pain of killing, and he bringeth it accordingly, is Felony.

Outlawry in Trespas is no forfeiture of Land, as Outlawry in Felony is; for although the non-appearance is the cause of the Outlawry in both, yet the force of the Outlawry shall be esteemed according to the heinousness of the offence, which is the principal cause of the Process.

6.

According to the beginning thereof.

As if a Servant, which is out of his Masters service, kill his Master, through the malice which he bare him when he was his Servant, this is Petty Treason.

7.

According to the end thereof.

As if a man warned to answer a matter in Writ, there he shall not answer to any other matter then is contained in the Writ, for that was the end of his coming.

8.

Derivativa poteſtas non poteſt eſſe major primitivâ.

A Servant ſhall be ſtopped to ſay the Franktenement is belonging to his Maſter, by a Recovery againſt his Maſter, although the Servant be a ſtranger to the Recovery; for he ſhall not be in a better caſe then he is in, whoſe Right he claimeth or juſtifieth.

9.

Quod ab initio non valet, in tractu temporis non convaleſcit.

If an Infant or a Maried woman do make a Will, and publiſh the ſame, and afterwards dieth, being of full age or ſole, notwithſtanding this Will is void.

10.

Unumquodque diſſolvitur eo modo quo colligatur.

An Obligation or other matter in writing may not be diſcharged by an Agreement by word, but by writing.

11.

He that claimeth a thing on high,
Shall neither have gain nor loſs thereby.

As if one Joynt Tenant make a Leaſe of his Joyntee, reſerving rent, and die; the Heir which ſurviveth ſhall have the Reverſi-

on

on of his Joyntee, but not the rent, because he cometh in by the first Feoffor, and not under his companion.

Also where the Husband being leased for years in right, reserving a rent, the woman shall have the residue of the term, but not the rent.

12.

Debile fundamentum fallit opus.

When the Estate whereunto the Warranty is annexed is defeated, the Warranty is also defeated.

13.

Incidents may not be severed.

As if a man grant Wood to be burnt in such a house, Wood may not be granted away, but he which hath the house shall have the wood also.

14.

Actio personalis moritur cum persona.

As if Battery be done to a man, if he that did the Battery or the other die, the Action is gone.

If the Lessor covenants to pay Quit Rents during the term, his Executor shall not pay it, for it is a personal covenant.

15.

Things of higher nature do determine things of lower nature.

As matters of writing do determine an agreement by words.

If an offence, which is Murder at the Common Law, be made High Treason, no Appeal lieth for it, for that the Murder is drowned and punishable as Treason, whereof no Appeal lieth.

16.

Majus continet minus.

Where by the Custom of a Manor a man may demise for Life, he may demise to his Wife *durante viduitate*.

17.

Majus dignum trahit ad se minus dignum.

As the Writings, the Chest or Box they are in.

Of PHILOSOPHY.

18.

Naturæ vis maxima.

Natural Affection or Brotherly Love are good causes or considerations to raise an Use.

And one Brother may maintain a Suit for another.

19.

The Law favoureth some persons, viz.

Men out of the Realm or in Prison, Women

men married, Infants, Ideots, Madmen, Men without intelligence, Strangers, that are neither parties nor privy, and things done in anothers right.

A Descent shall not take away the Entry of a man out of the Realm, or in Prison, or of a married woman, or of an Infant.

And a Lease made to the Husband and Wife after the death of the Husband, the Wife shall not be charged for Waste during the Marriage.

An Ideot shall not be compelled to plead by his Guardian or next Friend, but shall be in the Court; and he that pleadeth the best plea for himself shall be admitted.

If a dumb man bring an Action he shall plead by his next friend.

If a Lessee for years grant a Rent-charge, and surrendereth, the Rent shall be paid during the term to the Stranger.

A man outlawed or excommunicated may bring an Action as an Executor.

20.

And a mans Person before his Possessions.

Mentioned of corporal pain, shall avoid a Deed, but not his Goods.

21.

And matter of possession more then matter of right, when the right is equal.

As if a man purchase several Lands at one time, held of several Lords by Knights Service, and dieth, the Lord which first seizeth the Ward shall have it, otherwise the elder Lord.

22.

Matter of profit or interest shall be taken largely: and it may be assigned, and it may not be countermanded: but matter of pleasure, trust, or authority, shall be taken strictly, and may be countermanded.

As licence to him in my Park or in my Garden to walk, extendeth only to himself, and not to his Servant, nor any other in his company, for it is matter of pleasure onely. Otherwise it is of a licence to hunt, kill, and carry away the Deer, which is matter of profit.

A Church way is matter of ease.

Of POLITICAL.

23.

Nothing shall be void which by possibility may be made good. If Land be given to a man, and to a woman maried to another man, and the Heirs of their two bodies, this is a present Estate Tail, because of the possibility.

24. *Ex*

24.

Ex nudo pacto non oritur actio.

No man is bound to his promise; nor any Use can be raised without good consideration.

A consideration must be some cause or occasion which must amount to a recompence in Deed or in Law, as Money or Natural Affection, not long Acquaintance nor great Familiarity.

25.

The Law favoureth a thing that is of necessity.

As to pay several Expences shall not be said to administer, to distrain in the night Damage feasant, to kill another to save his own life.

A Servant to beat another to save his Master, if he cannot otherwise chuse.

To drive another mans cattel amongst mine own, untill I come to a place to shift them, is no Trespass.

26.

And for the good of the Commonwealth.

As killing of Foxes, and the pulling down of an house of necessity to stay a Fire.

27.

Communis error facit jus.

As an Acquittance made by the Maior alone, where there be an hundred presidents, is good.

28.

And things that are in the custody of the Law.

Goods taken by Distress shall not be taken in Execution for the debt of the owner thereof.

29.

The Husband and Wife are one person.

They cannot sue one another, nor make any Grant one to another. And if a woman marry with her Obligor, the debt is extinct, and she shall never have any Action if another were bound with him, for by the Mariage the Action is suspended, and an Action Personal suspended against one is a discharge to all.

30.

An Obligation with a Condition to enfeoff a woman before such a day, and before the day the Obligor taketh her to wife, the Obligation is forfeited because he cannot enfeoff her, but he may make a Lease for years with a remainder to his wife.

When a joynt Purchase is during the Mariage, every one shall have the whole.

When a joynt Purchase during the Mariage is made, and the Husband sell, the Wife shall have a *Cui in vita* for the whole against both, and on a Feoffment made to one man and

and his Wife, and to a third person, the third person shall have one moiety.

31.

All that a Woman hath appertaineth to her Husband.

Personal things and things absolutely real, as Lands, Rents, &c. or Chattels real, and things in Action, are onely in her right; notwithstanding real things and things in Action he may dispose at pleasure, but not will nor charge them: and he shall have her real Chattels if he survive. Of things in Action the woman may dispose by her last Will, and she may make her Husband her Executor, and he shall recover them to the use of the last Will of his Wife.

If a Lessee for years grant his term to a man or woman, and to another, they are joynt Tenants: but if Goods be given to her and to another, her Husband and the other are Tenants in common.

The Husband may release an Obligation or Trespass for Goods taken when his Wife was sole, and it shall be good against the woman if he die: but if he die without making any such Release, the woman shall have the Action, and not the Executor of her Husband.

The

The woman surviving shall have all things in Action, or her Executors if she die.

The Husband shall be charged with the Debts of his Wife but during her life.

32.

The will of the Wife is subject to the will of her Husband.

Note, a Feoffment made to the Wife, she shall have nothing if her Husband do not thereunto agree.

MORAL RULES.

33.

The Law favoureth works of charity, right, and truth, and abhorreth fraud, covin, and incertainties, which obscure the Truth; contrarieties, delays, unnecessary circumstances, and such like.

34.

Dolus & fraus una in parte sanari debent.

No man shall take benefit of his own wrong. If a man be bound to appear at a day, and before the day the Obligee casts him in prison, the Bond is void.

A Grant of all his Woods in *B* Acre which may be reasonably spared, is a void Grant, if it be not reserved to a third person to appoint what may be spared.

A

A Feoffment made in Fee of two Acres to two men, *Habend'* one Acre to one, and the other Acre to the other; this *Habend'* is void.

35.

Lex neminem cogit ad impossibilia, &c.

The Law compelleth no man to shew that which by intendment he doth not know: as if a Servant be bound to serve his Master in all his commandments lawful, it is a good plea to say, he served him lawfully.

A covenant to make a new Lease upon the Surrender of the old Lease, and after the covenanter doth make a Lease by Fine for more years to estrange, the covenant is broken, although the Lessee did not surrender, the which by the words ought to be the first Act, for that the other had disabled to take or to make.

LAW CONSTRUCTIONS.

The Law expoundeth things with equity and moderation, to moderate the strictness. It is no Trespass to beat his Apprentice with a reasonable correction, or to go with a woman to a Justice of Peace, to have the Peace of her Husband against the will of her Husband, which equity doth restrain the generality, if there be any mischief or inconvenieuce

venience in it: As if a man make a Feoffment of his Lands in, and with Common, in all his Lands in *C*, the Common shall be intended within his Lands in *C*, and not in his other Lands he shall have elsewhere.

36.

Every act shall be taken most strictly against him that made it.

As if two Tenants in common grant a Rent of 10 *s.* this is several, and the Grantees shall have 20 *s.* but if they make a Lease, and reserve 10 *s.* they shall have onely 10 *s.* between them.

So an Obligation to pay 10 *s.* at the Feast of our Lord God, it is no plea to say that he did pay it, but he must shew at what time, or else it will be taken he paid it after the Feast.

37.

He that cannot have the effect of the thing shall have the thing it self.

Ut res magis valeat quàm pereat.

As if a Termor grant his Term *Habendum immediatè post mortem suam*, the Grantee shall have it presently.

38.

When many joyn in one Act, the Law saith it is the Act of him that could best do it, and that thing should be done by those of the best skill.

As

As the Disseizee and the Heir of the Disseizor, who is by discent, joyn in a Feoffment, this shall be the Feoffment of the Heir onely, and the Confirmation of the Disseizee.

And the Merchant shall weigh the wares, and not the Collectors.

39.

When two Titles concur, the elder shall be preferred.

40.

By an Acquittance for the last Payment all other Arrearages are discharged.

41.

One thing shall enure for another.

If the Lessor enfeoff the Lessee for Life, it shall be taken for a Confirmation.

42.

In one thing all things following shall be concluded, in granting, demanding, or prohibiting.

If one accept a Close or Wood, the Law will give him a way to it.

43.

A man cannot qualifie his own Act.

As to release an Obligation untill such a time.

44.

The Construction of the Law may be alter-

ed

by the Special agreement of the parties.

If a house be blown down with the wind the Lessee is excused in Waste; but if he have covenanted to repair it, there an Action of Covenant doth lie by the agreement of the parties.

45.

The Law regardeth the intent of the parties, and will imply their words thereunto; and that which is taken by common intendment shall be taken to be the intent of the parties: and common intendment is not such an intendment as doth stand indifferent, but such an intent as hath the most vehement presumption. All incertainty may be known by circumstances, every Deed being done to some purpose, reason would that it should be construed to some purpose; and variance shall be taken most beneficial for him to whom it is made, and at election.

46.

An intendment of the parties shall be ordered according to the Law.

If a man make a Lease to a man and to his Heirs for ten years, intending his Heirs shall have it if he die, notwithstanding the intent the Executors shall have it.

47. *Qui*

47.

Qui per alium facit, per seipsum facere videtur.

A promise made to the Wife in consideration of a thing to be performed by her Husband, if he agree and perform the consideration, in an Action of the Case he shall declare the Assumption was made to him.

And if my Servant sell my Goods to another in Debt, I shall suppose he bought them of me.

CUSTOMS.

Consuetudo est altera lex.

Customs are of two sorts, General Customs in use throughout the whole Realm, called Maxims; and Particular Customs used in some certain County, City, Town, or Lordship, whereof some have been specified before, and some follow here, and where occasion is offered.

GENERAL CUSTOMS.

The Kings Excellency is so high in the Law, that no Freehold may be given to him, nor derived from him, but by matter of Record.

Every Maxim is a sufficient Authority to it self; and which is a Maxim, and which is not, shall always be determined by the Judges,

Judges, becauſe they are known to none but to the Learned.

A Maxim ſhall be taken ſtrict.

A particular Cuſtom, except the ſame be a Record in ſome Court, ſhall be pleaded and tried by 12 men.

CHAP. II.
STATUTES.

THE laſt ground of the Laws of *England* ſtandeth in divers Statutes made by our Sovereign Lord the King and his Progenitors, and by the Lords Spiritual and Temporal, and the Commons, in divers Parliaments, in ſuch caſes where the former Laws ſeemed not ſufficient to puniſh evil men, and to reward the good.

Of general Statutes the Judges will take notice if they be not pleaded, but not of ſpecial or particular.

All Acts of Parliament, as well private as general, ſhall be taken by reaſonable conſtruction, be collected out of the words of the Act onely, according to the true intention and meaning of the maker.

Four

Four Leſſons to be obſerved where contrary Laws come in queſtion.

1. The inferiour Law muſt give place to the ſuperiour.

2. The Law general muſt yield to the Law ſpecial.

3. Mans Laws to Gods Laws.

4. An old Law to a new Law.

And oftentimes all theſe Laws muſt be joyned together to help a man to his right; as if a man diſſeized, and the Diſſeizor made a Feoffment to defraud the Plaintiff; in this caſe it appears, that the ſaid unlawful Entry is prohibited by the Law of Reaſon.

But the Plaintiff ſhall recover the double Damage, and that is by the Statute of 8 *H.* 6. And that the Damage ſhall be ſeſſed by 12 men, that is, by the Cuſtom of the Realm; and ſo in ſome caſes theſe three Laws do maintain the Plaintiffs right.

And theſe Laws concern either mens Poſſeſſions or the Puniſhment of Offences.

And ſo much ſhall be ſufficient to be ſaid touching Common Law, Cuſtoms, and Statutes.

Con-

Concerning POSSESSIONS.

The difference between Poſſeſſion and Seizin is;

Leaſe for years is poſſeſſed, and yet the Leſſor is ſtill ſeized; and therefore the *Terms of the Law* are, that of Chattels a man is poſſeſſed, whereas in Feoffments, Gifts in Tail, and Leaſes for life, he is called ſeized.

CHAP. III.

Of poſſeſſion of Franktenement.

TEnant in Feeſimple is he which hath Lands or Tenements to hold to him and his Heirs for ever. It is the beſt Inheritance a man may have: he may ſell, or grant, or make his will of thoſe Lands.

And if a man die, they do diſcend to his Heir of the whole bloud.

CHAP.

CHAP. IV.
FEE TAIL.

FEE Tail is of what body he ſhall come that ſhall inherit.

Tenant in tail is ſaid to be in two manners.

Tenant in tail General, and Tenant in tail Special.

General Tail is, where Lands or Tenements be given to a man and his Wife, and to the Heirs of their two bodies, or to his Heirs Males, or to his Heirs Females.

Tenant in Tail is not puniſhable for Waſte.

Tenant in Tail cannot will his Lands, nor bargain, ſell, or grant, but for term of his life, without a Fine or Recovery.

If a man will purchaſe Lands in Fee, it behoveth him to have theſe words *Heirs* in his Purchaſe.

If a man would grant Lands in Tail it behoveth him to appoint what body they ſhall come of.

Yet a Deviſe of Lands to a man and his Heirs Males is a good Intail, and of Lands to a man for ever a good Fee Simple.

How

How Lands shall discend.

Inheritance is an Estate which doth discend: it may not lineally ascend from the Son which purchaseth in Fee, and dieth, to his Father; but discendeth to his Uncle or Brother, and to his Heirs, which is the next of the whole bloud, for the half bloud shall not inherit, but the most worthy of bloud, as of the bloud of the Father before the Mother, of the elder Brother before the other, and born within espousal.

A Discent shall be intended to the Heir of him which was last actually seized; that the Sister of the whole bloud, where the elder Brother did enter after the death of his Father, and not his Brother of the half bloud, nor any other collateral Cousin shall inherit; yet notwithstanding such a one is Heir to a common Ancestor: in which Rule every word is to be observed, and so in every Maxim, if the Land, Rent, Advowson, or such like to discend to the elder Son, and he die before any Entry or receipt of the Rent, or presentment to the Church, the younger Son shall have and inherit: and the reason is, because that in all Inheritances in possession he which claimeth title thereunto as Heir ought to make him-

himself Heir to him that was last actually seized.

Here the Possession of the Lessee for years or of the Guardian, shall invest the actual Possession and Franktenement in the elder Brother.

But he dying seized of a Reversion, or a Remainder, or an Estate for Life or in Tail, there he which claimeth the Reversion or Remainder as Heir, ought to make himself Heir to him that had the Gift or made the Purchase.

Feodo excludeth an Estate Tail, where the second Son shall inherit before the Daughter.

And if the Lands be once settled in the bloud of the Father, the Heir of the Mother shall never have them, because they are not of the bloud of him that was last seized.

And to the Heir of the bloud of the first Purchaser:

As if the Father purchase Land, and it discendeth to the Son, who entereth and dieth without Heirs of the Fathers part, then the Land shall discend to the Heirs of the Mother or Father of the Father, and not to the Heirs of the Mother of the Son, although they are more near of bloud to him that was last seized, yet they are not of the bloud of the first Purchaser.

If

If the Heirs be Females in equal distance, as Daughters, Sisters, Aunts, &c. they shall inherit together, and are but one Heir, and are called Parceners.

Gavilkind.

Doth discend to all the Sons, and if no Sons to all the Daughters, and may be given by Will by the custom.

CHAP. V.
PARCENERS.

PArceners are of two sorts, Women and their Heirs by the Common Law, Men by the Custom.

They may have a Writ of Partition, and the Sheriff may go to the Lands, and by the Oaths of 12 men make Partition between them, and the eldest shall have the Capital Mesuage by the Common Law, and the youngest by the Custom. Where the parties will not shew to the Jury the certainty, there they shall be discharged in conscience, if they make partition of so much as is presumed and known by presumptions and likelihoods.

Par-

Parceners may by agreement make partition by Deed or by Word, and the eldest first chuse, unless their agreement be to the contrary.

Every part at the time of Partition must be of an even yearly value, without incumbrance.

Rent may be reserved for equality or partition (and may be distrained for) without a Deed.

Parceners by divers Discents, before partition being disseized, shall have one Assize.

A Parcener before partition may charge or demise her part.

The entry or act of one Copartner or Joynt Tenant shall be the act of both, when it is for their good.

If a Parcener after partition be entred, she may enter upon her Sisters part, and hold it with her in Parcenary, and have a new Partition, if she hold none of her part before she was outed, *viz.* in exchange.

CHAP. VI.
JOYNT TENANTS.

Joynt Tenants be such as have Joynt Estates in Goods or Lands, where he

that surviveth shall have all without incumbrance, if the Tenements abide in the same plight as they were granted.

Joynt Tenants may have several Estates.

A Joynt Tenant cannot grant a Rent charge but for term of his own life.

A Joynt Tenant may make a Lease for life or for years of his part, or release, and the Lessee for years may enter, although the Lessor die before the Lease begin, and his Heir shall have the Rent, but the Survivor the Reversion.

A Joynt Tenant may have a writ of Partition by the Statute of 31 *H.*8.*c.*32. A Partition made by Joynt Tenants, or Tenants in common of Estates of Inheritance, must be by Indenture, by word 'tis void.

CHAP. VII.
TENANTS IN COMMON.

TEnants in Common are those that hold Lands and Tenements by several titles.

They may joyn in Action Personal, but they must have several Actions Real.

They may have a writ of Partition by the Statute of 31 *H.*8.*c.*32.

If one Parcener, Joynt Tenant, or Tenant in

n Common take, all the others have no re-
nedy but by *Ejectione firme*, or such like, or
Waste.

GAVILKIND LANDS.

Tenant by the courtesie of *Kent*, whether
e have issue or no, untill he marry, and so
rth, he may not commit Waste.

CHAP. VIII.
TENANT IN DOWER.

A Woman shall be endowed of all sorts
of Inheritance of her Husband, where
e Issue that she had by him may inherit as
eir to his Father, by meets and bounds of a
ird part.

She shall have House room, and Meat, and
rink, in common for 40 days: but she
y not kill a Bullock within those 40 days
er the death of her Husband, in which
ne her Dower ought to be assigned her.

The Assignment by him that had the
nktenement is good, but by him that is
ardian in Soccage, or Tenant by *Elegit*,
erte Elegit) or Statute, or Lessee for
rs, is not.

She is to demand her Dower on the Land.

She shall recover damages when her Husband died seized from the death of her Husband, if the Heir be not ready at the first day to assign her Dower.

She shall have all her Chattels real again except her Husband sell them: he may not charge them or give them by his Will. And likewise her Bonds, if the Money were due in the life of her Husband, and all convenient Apparel; but if she have more then is fit for her degree, it will be Assets.

A Woman shall be barred of her Dower so long as she detaineth the body of the Heir being in ward, or the Writing of the Son Land.

A Woman shall not be endowed of any Lands that her Husband joyntly holden with another at the time of his death.

Dower of Gavilkind Lands.

If the Woman shall be endowed of a half so long as she is unmaried and chaste, and it may be held with the Heir in common.

It is of Lands and Tenements, and not of a Fair or such like, where the Heir loseth his Inheritance, there she loseth not her Dower.

JOYNTURE.

If a woman have a Joynture before Marige, she may claim no Dower, 27 *H.*8.

If it be made during Mariage, she may nter into her Joynture presently,

If she enter or accept of it, she shall not e endowed.

If she shall be expulsed of any part of her oynture, she shall be endowed of the resiue of her Husbands Lands.

CHAP. IX.

Tenant for term of Life.

TEnant for term of Life is he that hath Lands or Tenements for term of his Life, r another mans Life, and none of lesser Estate may have a Freehold.

If a Tenant for Life sow the Lands, and die before the Corn be reaped, his Executor hall have it, but not the Grass nor other ruit.

If a Tenant for Life be impanelled upon an nquest, and forseit Issues and die, they shall e levied upon him in the Reversion: and so ikewise if the Husband on the Lands of the Wife.

CHAP. X.

Tenant for term of Years.

TEnant for term of Years is where a man letteth Lands or Tenements to another for certain Years.

He may enter when he will, the death of the Lessor is no let, and may grant away his term before it begin: but before he enter he cannot surrender, nor have any Action of Trespass, nor take a Release.

He is bound to repair the Tenements.

The Lessor may enter to see what Reparations or Waste there is, and he may distrain for his Rent or have an Action of Debt.

If Tenant for life or years granteth a greater Estate then he hath himself, he doth forfeit his term.

CHAP. XI.

TENANT AT WILL.

TEnant at Will is he that holdeth Lands or Tenements at the Will of another.

The Lessor may reserve a yearly Rent, and may distrain for it, or have an Action of Debt: the Lessee is not bound to repair the Tenements. The

The will is determined by the death of the Leſſor, or of a woman Leſſee by her Marriage; or when the Leſſee will take upon him to do that which none but the Leſſor may do lawfully, it determineth the will and poſſeſſion, and the Leſſor may have an Action of Treſpaſs for it.

The Leſſee ſhall have reaſonable time to have away his Goods and his Corn; but he ſhall loſe his Fallow and his Dung carried forth.

CHAP. XII.
REMAINDER.

A Remainder is the reſidue of an Eſtate at the ſame time appointed over, and muſt be grounded upon ſome particular Eſtate given before, granted for years, or life, and ſo forth.

And ought to begin in Poſſeſſion, when the particular Eſtate endeth: there may be no mean time between either by Grant or Will.

No Remainder can be of a Chattel Perſonal: a Remainder cannot depend on a matter *ex poſt facto*, as upon Eſtate Tail, upon condition that if the Tenant in Tail ſell, then

the Land to remain to another, is a void Remainder.

CHAP. XIII.
REVERSION.

A Reversion is the residue of an Estate that is left after some particular Estate granted out in the Grantor: as if a man grant Lands for Life, without further granting, the Reversion of the Fee Simple is in the Lessor.

CHAP. XIV.
WASTE.

WAste lieth against a Tenant by the courtesie, for life, for years, or in dower, and they shall lose the place wasted, and treble damages.

Waste lieth not against a Tenant by *Elegit*, Statute Merchant or Staple, but Account after the debt or damage levied.

Waste or Account will lie against a Tenant in Mortgage, because he had Fee conditional.

Waste

Waste is not given to the Heir for Waste in the life of his Father.

Waste is given against the Assign of the Tenant for life, or of anothers life, but not against the Assignee of a Tenant in dower, or of the courtesie, it is to be brought against themselves.

It is Waste to pull up the Forms, Benches, Doors, Windows, Walls, Filberd trees, or Willows planted.

CHAP. XV.
DISCONTINUANCE.

DIscontinuance is where a man that hath the present possession by making a larger Estate then he may, divesteth the Inheritance of the Lands or Tenements out of another, and dieth, and the other hath right to have them, but he may not enter because of such alienation, but is put to his Writ.

If a man seized in the right of his Wife, or if a Tenant in Tail, made a Feoffment, and died, the Wife might not enter, nor the Issue in Tail, nor he in Reversion, but are put to their Action.

Now the wife may enter by the Statute 32 *H.*8. and a Recovery suffered by the Tenant by courtesie, or by the Tenant after the possibility of Issue extinct, or for term of life is now made no Discontinuance.

Such things that pass by way of a Grant by Deed without Livery and Seizin, cannot be discontinued as a Reversion, or Rentcharge, Common, &c.

A Release or Confirmation without warranty maketh no Discontinuance.

CHAP. XVI.
DISCENTS.

DIscents which take away Entries is where a man disseiseth another and dieth, and his Heir entreth, or maketh a Feoffment to another in Fee or in Tail, and he dieth, and his Heir entreth, these Discents put a man from his Entry.

A Discent during Minority, Mariage, *non sanæ mentis*, Imprisonment, or being out of the Realm, do not take away an Entry.

Discents of Rents in gross, the Lord notwithstanding may distrain.

A Dying seizee of a term for life, or of a Remainder or Reversion, doth not take away an

an Entry : he must die seized in Fee and Franktenement.

A Disseisin cannot be to one Joynt Tenant or Parcener alone, if it be not to the other.

If a condition be broken after a Discent, the Donor, Feoffor, or his Heirs may enter.

A wrongful Disseisin is no Discent, unless the Disseisor have quiet possession five years without entry or claim. 32 *H.*8.

CHAP. XVII.

CONTINUAL CLAIM.

COntinual Claim is a demand made by another of the property or possession of a thing which he hath not in possession, but is withholden from him wrongfully ; defeateth a Discent happning within a year and a day after it is made, and now by the Statute within five years.

CHAP. XVIII.

REMITTER.

REmitter is when by a new title the Franktenement is cast upon a man, whose Entry was taken away by a Discent or

or Diſcontinuance, he ſhall be in by the elder title: as if Tenant in Tail diſcontinue the Tail, and if after diſſeiſeth his Continuance, and dieth thereof ſeized, and the Land diſcend to his Iſſue, in that caſe he is ſaid to be in his Remitter, *viz.* ſeized his ancient Eſtate Tail.

When the Entry of a man is lawful, and he taketh an Eſtate to himſelf when he is of full age, if it be not by Deed indented, or matter of Record which ſhall eſtop him, it ſhall be to him a good Remitter.

A Remitter to the Tenant ſhall be a Remitter to him in the Remainder and Reverſion.

CHAP. XIX.
TENURES.

ALL Lands are holden of the King immediately, or of ſome other perſon; and therefore when any that hath Fee dieth without Heir, the Lands ſhall eſcheat to the Lord.

And they are holden for the moſt part either by Knights Service or in Soccage.

Knights Service draweth to it Ward, Mariage and Relief, *viz.*

of

Of Ward, Mariages, and Relief.

The Heir Male unmaried ſhall be in ward untill 21 years of age.

If he be maried in the life of his Anceſtors, yet the Lord ſhall have the profit of the Land till his full age.

None ſhall be in ward during the life of the Father.

If the Heir refuſe a convenient Mariage, he ſhall pay to the Lord the value when he cometh to full age.

If the Ward marry againſt the will of the Guardian, he ſhall pay him the double value of his Mariage: but if the Heir be of the full age aforeſaid, he ſhall pay a Relief.

A Relief for a whole Knights Fee is 5 *l.* for half a Knights Fee 50 *s.* for a quarter 25 *s.* for more, more; for leſs, leſs, accordingly.

A Relief is no Service, but is incident to a Service, the Guardian muſt not commit waſte, *viz.* Chattels.

Tenure in Soccage.

Tenure in Soccage is where the Tenant holdeth of his Lord by Fealty, Suit of Court, and certain Rent for all manner of Service.

The

The Lord shall not have the Wardship, but a Relief presently after the death of his Tenant.

A Relief for Soccage land is a years rent, and is to be paid presently upon a Discent or Purchase. As if the land were held by Fealty, and 10 *s.* rent *per an.* 10 *s.* shall be paid for Relief.

The next of the kin to whom the Inheritance may not discend, shall have the wardship of the land and of the Heir, untill his age of 14 years, to the use of the Heir, at which age the Heir may call him to account.

If the Guardian die, the Heir cannot have an Action of Account against the Executor of the Guardian.

The Executor of the Guardian may not have the Wardship, but some other of the next of kin. The Husband may not alien the Interest of the Wife in the Guardianship, nor hold it; if she die it may not be sold.

If another man occupy the lands of the Heir as Warden in Soccage, the Heir may call him to account as Guardian.

If the Guardian hold the lands after the Heir is 14, the Heir shall call him to account as his Bailiff.

Ga-

Gavilkind.

The next of kin ſhall have the Guardianſhip of the body and lands, untill the Heir be 15 years of age.

Diverſities of Ages.

A Man hath but two ages.

The full age of Male and Female is One and twenty.

A Woman hath ſix Ages.

The Lord her Father may diſtrain for Aid for her Mariage when ſhe is ſeven.

She is double at nine.

She is able to aſſent to Matrimony at twelve.

She ſhall not be in ward if ſhe be fourteen.

She ſhall go out of ward at ſixteen.

She may ſell or give her Lands at one and twenty.

No man may be ſworn in any Jury before he be 21; before which age all Gifts, Grants or Deeds, as do not effect by delivery of his own hands are void, and all others voidable, except for neceſſary meat, drink, and apparel, &c.

An

An Infant may do any thing for his own advantage as to be Executor, or such like. An infant shall sue by his next Friend, and answer by his Guardian.

GAVILKIND.

The Heir may give or sell at fifteen years of age.

1. The Land must discend, not be given him by Will.

2. He must have full recompence.

3. It must be by Feoffment, and Livery of Seisin with his own hands, not by Warrant of Attorney, or any other Conveyance.

By the Civil Law an Infant may be an Executor at 17 years of age.

An Infant may make a Will of his Goods at 14 years of age, and a Maid at 12.

CHAP. XXI.

RENTS.

THere are three manners of Rents, Rent-service, Rent-charge, Rent-seck.

Rent-service is where a man holdeth his Lands of his Lord by certain Rent, &c.

Rent-charge is granted or reserved out of certain lands by deed with a clause of distress.

Rent-seck is a Rent granted without a distress: or Rent-service, severed from other service, becometh a Rent-seck. The

The Reverſion of a Rent without a Deed is void, if the Reverſion be not in the Reſervor. If a Rent be granted from the Reverſion, it is a Rent-ſeck.

He which is not ſeized of a Rent-ſeck, is without remedy for the ſame.

The gift of a Peny by the Tenant in name of Seizin of a Rent-ſeck, is a good poſſeſſion and Seiſin.

No Rent may be reſerved upon any Feoffment, Gift, or Leaſe, but onely to the Donor and his Heirs, not to any ſtranger.

A Rent-charge is extinct by the Grantees purchaſe of parcel of the Land, but by the purchaſe of any of his Anceſtors it ſhall not, it ſhall be apportioned like Rent-ſervice, according to value of the Land; but if the whole Land diſcend of the ſame Inheritance, the Rent is extinguiſhed.

By the grant of the Reverſion the Rents and Services paſs. If Rent be granted to a man without more, ſaying, he ſhall have it for term of his life. If the Lord accept of Rent or Service of the Feoffment, he excludeth himſelf of the arrerages of the time of the Feoffment.

For a Rent-charge behind one may have an Action of Annuity, or diſtrain.

DISTRESS.

For what, when, and where a man may diſtrain.

A

A man may distrain for a Rent-charge, Rent-service, Heriot-service, and all manner of service, as Homage, Escuage, Fealty, Suit of Court, and Relief, &c.

Heriot custom must be seized: and for Amerciaments in a Leet, upon whose ground soever it be in the Liberty. A man may not distrain for Rent after the Lease is ended, nor have Debt upon a Lease for life, before the Estate of Franktenement be determined.

A man may not distrain in the night but for Damage feasant.

A man may not distrain upon the Possessions of the King, but the King may distrain of any Lands of his Grantee or Patentee.

A man may not distrain the Beasts of a stranger that come by escape, untill they have been Levant and Couchant on the Ground, but for Damage feasant.

A man may not distrain the Oxen of the Plough, nor a Milstone, nor such like, that is for the good of the Commonwealth, nor a Cloke in a Tailors Shop, nor Victuals, nor Corn in Sheafs, but if it be in a Cart, for Damage feasant.

A Distress must be always of such things as the Sheriff may make a Replevin.

A man may not sever Horses joyned together, or to a Cart.

If

If a man put cattel into a pasture for a week, and afterwards *J.N.* doth give him notice that he will keep them no longer, and the Owner will not fetch them away, *J.N.* may distrain them Damage feasant.

If a man take Beasts Damage feasant, and driving them by the high way to a Pound, the Beasts enter into the house of the Owner, and the taker prayeth the delivery of them, and the Owner will not deliver them, a Writ of Rescous lieth.

If a man distrain Goods he may put them where he will: but if they perish he shall answer for them.

If cattel, they ought to be put into a common Pound, or else in an open place where the Owner may lawfully come and feed them, and notice given to him thereof, and then if they die it is in default of the Owner.

Cattel taken Damage feasant may be impounded in the same Land; but goods or cattel taken for others things may not.

Sheep may not be distrained if there be a sufficient Distress besides.

No man shall drive a Distress out of the County wherein it was taken.

No

No Distress shall be driven forth of the Hundred, but to a Pound Overt within three miles.

A Distress may not be impounded in several places, upon pain of 5 *l.* and treble damage.

Fees for impounding one whole Distress 4 *d.*

The Executor or Administrator of him which had Rent or Fee-farm in Fee, in Fee Tail, or for life, may have Debt against the Tenant that should pay it, or distrain; and this is by the Stat. 32 *H.*8.

So may the Husband after the death of his Wife, his Executor or Administrator. So may he which hath Rent for another mans life, distrain for the arrearages after his death, or have an Action of Debt, 32 *H.*8.

But if the Landlord will distrain the goods or cattel of his Tenant, and do sell them, or work them, or convert them to his own use, he shall be Executor of his own wrong.

CHAP. XXIII.
DISSEISIN OF RENTS.

THree causes of Disseizin of Rent-service, Rescous, Replevin, Inclosure.

Four

Four of Rent-charge, Denyer, and Inclosure. Forstalling is a Disseizin of all.

Forestalling is when the Tenant doth with force and arms waylay or threaten in such manner, that the Lord dareth not distrain or demand the Rent.

Denial is, if there be no Distress on the Land, or if there be none ready to pay the Rent, &c.

And of such Disseizins a man may have an Action of Novel Disseizin against the Tenant, and recover his Rent and arrearages, and his damage and costs: and if the Rent be behind another time, he shall have a Redisseizin, and recover double damage.

Rescous and Pound-breach.

If the Lord distrain when there is no Rent nor Service behind, the Tenant may not rescue: otherwise if another distrain wrongfully; but no man may break the Pound, although he did tender Amends before the cattel were impounded.

If the Lord come to distrain, and see the Beasts, and the Servant drive them out of his Fee, the Lord may not have Rescous, because he had not the possession, but he may follow them and distrain, but not damage feasant.

CHAP.

CHAP. XXIV.
COMMON.

COmmon is the right that a man hath to put his Beasts to pasture, or to use and occupy Ground that is another mans.

There be divers Commons, *viz.* Common in gross, Common appendant, Common appertinant, Common because of Neighbourhood. *Vide Terms of Law.*

The Lords of Wastes, Woods, and Pastures, may approve against their Tenants and Neighbours with Common appertinant, leaving them sufficient Common and Pasture to their Tenants.

As if one Tenant surcharge the Common, the other Tenants may have against him a Writ *De admensuratione pasturæ*, but not against him that hath Common for Beasts without number; neither may the Lord enclose from such Tenants, if he do, the Tenant may bring an Assize against him, and recover treble Damage; but the Lord may have a *Quo jure*, and make the Tenant shew by what title he claimeth.

CHAP.

CHAP. XXV.
WAYS.

THE Kings High Way is that which leadeth from Village to Village.

A common High Way is that which leadeth from a Village into the Fields.

A Private Way is that which leadeth from one certain place unto another. 3 *Ed.* 3.

In the Kings High Way the King hath only passage for himself and his People; and the Franktenement and all the Profits are in the Lord of the Soyl, as they be presented at the Leet.

Of a common High Way the Franktenement and the Profits are to him that hath the Land next thereto adjoyning; and if it be stopped, and I be damnified by it, I have no remedy but by Presentment in the Leet.

If a Private Way be straitned, or if a Bridge there which another ought to repair, be decayed, an Action of the case lieth; but if the Way be stopped, an Assize of Nusance lieth, and the Lessee may have it after the Lessors years begin, or the Lessee may have an Action of the case. If the most part of a Water Way be stopped, an Assize will lie.

CHAP.

CHAP. XXVI.
LIBERTIES.

A Liberty is a Royal Privilege in the hands of a Subject.

All Liberties are derived from the Crown, and therefore are extinguished if they come to the Crown again by Escheat, Forfeiture, or such like; for the greater doth drown the lesser.

One may have a Park, a Leet, Waif, Stray, Wreck of Sea, and *Tenura placitorum*, by Prescription, and without allowance in Eyre; but not Cognizance of Plea, nor *Catalla fellonum vel fugitivorum aut utlagatorum.*

A Liberty may be forfeited by misusing, as to keep a Market otherwise then it is granted.

A Liberty mry be forfeited for not using, when it is for the good of the Commonwealth; as not to exercise the Office of the Clerk of the Market, but not to use a Market is not.

Whatsoever is in the King by reason of his Prerogative, may not be granted or pardoned by general words, but by special.

CHAP.

CHAP. XXVII.
Of Chattels Real.

CHattels Real are Guardianships, Leases for years, or at will, &c.

Guardianship is a commodity of having the custody of the Body or Lands, or both, where the Heir is within age: and the Lord of whom the Land is holden by Knight Service shall have the same to his own use, for it is as a Chattel Real, and therefore his Executor shall have it.

The Guardian must not do waste, nor infeoff, upon pain of losing the Wardship: but he must maintain the Building out of the Issues of the Lands, and so restore it to the Heir.

If the Committee of the King commit, the Wardship shall be committed to another; if he Grantee, he shall lose the Wardship.

And one of the Friends of the Ward, being his next Friend, that will may sue for him.

If a Lease be made to a man and his Heirs or 20 years, it is a Chattel, and his Executor shall have it: otherwise if a man will a Lease to a man and his Heirs, here the word Heirs are words of Purchase, and his Heirs shall have it.

If a man grant *proximam advocationem* to *J.S.* and his Heirs, it is but a Chattel, for it is but for *unicâ vice.*

Writings pawned for Money lent are Chattels.

If a Woman have Execution of Lands by Statute Merchant, and taketh a Husband, he may grant it, for it is a Chattel.

Of Chattels Personal.

Chattels Personal are Gold, Silver, Plate, Jewels, Utensils, Beasts, and other Chattels and Moveable Goods whatsoever, Obligations, and Corn upon the ground.

All Goods as well moveable as unmoveable, Corn upon the ground, Obligations, Right of Actions, Money out of Bags, and Corn out of Sacks, *sunt catalla.*

Money is not to be passed by the Grant of all his Goods and Chattels; nor Hawks, nor Hounds, nor other things *feræ naturæ* for the property is not in any, not after they are made tame, longer then they are in his possession; as my Hounds following me, or my Man, or my Hawk flying after a Fowl, or my Deer hunting out of my Park: but if they stray of their own accord, it is lawful for any man to take, and the Heir shall have them.

All

All Chattels shall go to the Executors; Vats and Furnaces fixed in a Brewhouse, or Dyehouse by the Lessee: if they be fixed by Tenant in Fee the Heir shall have them.

Now something hath been said concerning Possessions, it followeth that it be shewed, how they may be conveyed from one man to another.

CHAP. XXVIII.
Of CONVEYANCES.

IN every Conveyance there must be a Grantor and a Grantee, and something granted.

The Conveyance of some persons is void, of others voidable.

Conveyance of a Woman Covert is void. without the consent of her Husband; and it ught to be made in her or his Name, except be done as Executor to another.

Of an Infant, that which doth not take ffect with the delivery of his own hands, is oid, and an Action of Trespass will lie a-inst him for taking the things given.

Otherwise it is but voidable, except it be Executor, or for necessary meat and ink, &c. for his advantage.

Voidable of *non ſanæ memoriæ*, or made by Dureſs Royal.

Voidable by the parties themſelves and their Heirs, and by them that ſhall have their Eſtates, except *non ſanæ* himſelf.

Grants by Fine.

Voidable by a Writ of Error, by an Infant during his nonage, and by the Husband for a Fine levied by his Wife alone during their Mariage.

Conveyance of ſome perſons cannot be good for ever without the conſent of others as the Dean without the Chapter, the Maior without the Commonalty, and of other Bodies Politick that have a Common Seal, or of a Parſon without the Patron and Ordinary.

If there be no Condition in the Conveyance, it ſhall be intended the elder.

A Conveyance made to a Female Covert ſhall be good and of effect, untill her Husband do diſagree.

An Infant may be Grantee, ſo may a Woman Outlawed, a Villain, a Baſtard, and a Felon.

A Baſtard can have no Heir but the Iſſue of his body lawfully begotten.

An Infant at the age of Discretion by his actual entry, and a Woman against the will of her Husband may be a Disseizor or a Trespassor.

In all Conveyances there must be one named, which may take by force the Grant at the beginning of the Grant.

A Grant made to the right Heirs of one that is dead is good, or *Custodibus Eccl.* is good for Goods.

All Chattels real or personal may be granted or given without a Deed.

Rent-service, Rent-seck, Rent-charge, Common of Pasture, or of Turbary, Reversion, Remainder, Advowson, or other things, which lie not in manual occupation, may not be conveyed for years, for life, in Tail or in Fee, without Writing.

The Maior or Commonalty, or such like, cannot make a Lease for years without a Deed.

CHAP. XXIX.
Of DEEDS.

THree things needful and pertaining to every Deed, Writing, Sealing, and Delivering.

In the Writing must be shewed the persons Names, their Dwelling place, and Degree. Things granted upon what consideration, the estate, whether absolute or conditional, with the other circumstances, and the time when it was done.

No Grant can be made but to him that was party to the Deed, except it be by way of Remainder.

The words must be sufficient in Law to bind the parties: as if a man grant *omnes terras certa sua*, a Lease for years passeth not but for Franktenement, at least *nec per omnia bona sua*.

Exceptio semper ultimo ponenda est.

The *Habend'* must include the Premisses.

A Condition cannot be reserved but by the Grantor, and it is proper to follow the *Habend'* presently.

The *Habend'* or Condition must not be repugnant to the Premisses, if it be it is void and the Deed will take effect by the Premisses.

A Warrant is good although it extend not unto all the Lands, nor to all the Feoffees, or made by one of the Feoffors.

If it be razed or interlined in the Date, or in any material place, it is very suspicious.

Of

Of Sealing.

A Writing cannot be said to be a Deed if it be not sealed, although it be written and delivered; it is but an Escrow.

And if it were sufficiently sealed, yet if the print of the Seal be utterly defaced, the Deed is insufficient, it is not my Deed.

It may not be pleaded, but it may be given in Evidence.

Of Delivery.

A Deed taketh effect by the Delivery, and if the first take any effect, the second is void.

A Jury shall be charged to enquire of the Delivery, but not of the Date; yet every Deed shall be intended to be made when it doth bear date.

Diversity in delivering of a Writing as a Deed or Escrow.

This Delivery ought to be done by the party himself, or by his sufficient Attorney, and so it shall bind him whosoever wrote or sealed the same.

If one be bound to make Assurance, he need not to deliver it, unless there be one to read it to him before.

And if any Writing be read in any other form to a man unlearned, it shall not be his Deed although he seal and deliver it.

There are two sorts of Deeds.

A Deed Poll, which is the Deed of the Grantor; a Deed Indented, which is the mutual Deed of either Parties. But in Law one is the Deed of the Grantor, and the other the Counter Part: and if any variance be in them, it shall be taken as it is in the Deed of the Grantor; and if the Grantor seal onely it is good.

CHAP. XXX.

Bargains and Sales.

NO Manor Lands, Tenements, or other Hereditaments can pass, alter, or change from one man to another, whereby an Estate of Inheritance or Freehold is made, or taketh effect in any person or persons, or any use thereof is made, by reason onely of any Bargain and Sale therefore, except the same

same be made by Writing indented, sealed, and inrolled in one of the Courts of Record at *Westminster*, or within the same Court or County where the Tenements so bargained do lie, before the *Custos Rotulorum* and two Justices of Peace, and the Clerk of the Peace, or two of them, whereof the Clerk of the Peace to be one, and that within six moneths after the Date of such Writing indented, 27 *H.*8.

The Inrolment shall be indented the first day of the Term, and shall have relation to the delivery of the Deed against all strangers.

CHAP. XXXI.
FEOFFMENTS.

A Feoffment is an Estate made by the delivery of Possession and Seizin by Party, or his sufficient Attorney.

A man cannot make Livery of Seizin before he have the Possession.

A Joynt Tenant cannot enfeoff his companion.

A copartner may make a Feoffment of his part, or release.

A man cannot enfeoff his Wife.

A Disseizor cannot enfeoff the Disseizee; for his entry is lawful upon the Disseizor.

Such persons as have possession in Lands for years or for life, &c. cannot take by Livery and Seizin of the same Lands.

If a Feoffment be made, and the Lessee for years give leave to the Lessor to make Livery and Seizin of the Premisses, saving himself to his Lease, &c. and he doth, the Term is not surrendred, for the Lessee had an Interest which could not be surrendred without his consent to surrender, and here his intent to surrender doth not appear; wherefore he may enter and have his Term, and the Rent is renewed: but it is otherwise with a Lessee for life, and the Rent is extinct.

The Lessor cannot make Livery and Seizin against the will of the Lessee being on the Land; but he may grant the Reversion, and if the Lessee do attorn, the Freehold will pass without Livery of Seizin.

Livery of Seizin.

Livery of Seizin is a ceremony used in Conveyance of Lands, that the common people might know the passing or alteration of the Estate. It is requisite in all Feoffments, Gifts,

Gifts in Tail, and Leaſes for life, made by Deed or without Deed.

No Freehold will paſs without Livery of Seizin, except by way of Surrender, Partition, or Exchange, or by matter of Record, or by Teſtament.

Livery of Seizin muſt be made in the life-time of him that made the Eſtate.

Dona clandeſtina ſunt ſemper ſuperſtitioſa.

By Livery of Seizin in one County the Lands in another County will not paſs.

Livery within view is good, if the Feoffee do enter in the life time of the Feoffor.

Livery may not be made of a Eſtate to be given *in futuro*, for no Eſtate in Franktenement may be given *in futuro*, but ſhall take effect preſently by Livery and Seizin.

Of Uſes.

The Statute of 27 *H.*8. hath advanced Uſes, and hath eſtabliſhed Surety for him that hath the Uſe againſt the Feoffees: for before the Statute the Feoffees were Owners of the Land, but now it is deſtroyed, and the *ceſtuy que uſe* is the Owner of the ſame: before the Poſſeſſion ruled the Uſe, but ſince the

the Use governeth the Possession. Indentures subsequent be sufficient to direct the Uses of a Fine or Recovery precedent, when no other certain and full Declaration was made before.

ATTORNEY.

An Attorney ought to do every thing in the name, and as the act of him which gave him the Authority; as Leases in name of the Lessor, but he must say, By vertue of his Letter of Attorney I do deliver you Possession and Seizin of, &c. for, &c.

An Attorney must first take possession before he can make Livery of Seizin.

If an Attorney do make Livery of Seizin otherwise then he hath Warrant, then it is a Disseizin to the Feoffor.

An Attorney must be made by Writing sealed, and not by Word.

CHAP. XXXII.
EXCHANGE.

IN Exchange both the Estates must be equal: there must be two Grants, and in every Grant mention must be made of this word Exchange.

It

It may be done without Livery of Seizin if it be in one Shire, or else it must be done by Indenture, and by this word Exchange, or else nothing passeth without Livery.

Exchange importeth in the Law a Condition of Re-entry, and a Warranty Voucher, and Recompence of the other Land that was given in exchange. An Assignee cannot re-enter, nor vouch, but rebate; Exchanger may re-enter upon an Assignee. And the same Condition defeated in part is defeated in the whole. And the same Law is in Partition.

CHAP. XXXIII.
GRANTS.

GRants must be certain. A Grant to *J.S.* or *J.N.* is void for the incertainty, although it be deliverd to *J.S.* the delivery of the Deed will not make a void Grant good, or to take effect.

The Lord cannot grant the Wardship of his living Tenant, because of the incertainty who shall be his Heir, unless he name some person.

When

When any thing is granted that is not certain, as one of my Horſes, then the choice is in the Grantee.

When ſeveral things are granted, then it is in the choice of him that is to do the firſt act.

A man cannot charge or grant that which he never had.

A man may charge a Reverſion.

A Parſon may grant his Tithes, or the Wooll of his Sheep, for years.

A thing in Action, a Cauſe of Suit, Right of Entry, or a Title for a Condition broken, or ſuch like, may not be given or granted to a ſtranger, but onely to the Tenant of the Ground, or to him that hath the Reverſion or Remainder.

A thing that cannot begin without a Deed may not be granted without a Deed; as a Rent-charge, Fair, &c. Every thing that is not given by delivery of Hands, muſt be paſſed by Deed. The Right of a thing real or perſonal may not be given in nor releaſed by word. A Rent of Condition or Re-entry may not be reſerved to one that is not Party to the Deed.

All things that are incident to others, paſs by the Grant of them that they are incident unto.

A.

A man by his Grant cannot prejudice him that hath an elder title.

If no Eſtate be expreſſed in the Grant, and Livery and Seizin be made, then the Grantee hath but Eſtate for life: but if there be ſuch words in the Grant, which will manifeſt the will of the Grantor, ſo his will be not againſt the Law, the Eſtate ſhall be taken according to his intent and will.

All Grants ſhall have a reaſonable conſtruction, and all Grants are made to ſome purpoſe, and therefore Reaſon would they ſhould be conſtrued to ſome purpoſe.

All Grants ſhall be taken moſt ſtrong againſt him that made it, and moſt beneficial to him to whom it is made.

To Grants of Reverſion or of Rents, &c. there muſt be Attornment, otherwiſe nothing paſſeth, if it be not by matter of Record.

ATTORNMENT.

Attornment is the agreement of the Tenant to the Grant by writing or by word; as to ſay, I do agree to the Grant made to you, or I am well contented with it, or I do attorn unto you, or I do become your Tenant, or I do deliver unto the Grantee a Peny by way of Seizin of a Rent, or pay, or do but

but one Service onely in the name of the whole, it is good for all.

It must be done in the lifetime of the Grantor.

Without Attornment a Signory, a Rent-charge, a Remainder, or a Reversion, will not pass but by matter of Record.

Without Attornment Services pass not by the sale of the Manor, nor from the Manor but by bargain and sale inrolled.

Attornment must be made by the Tenant of the Freehold, when a Rent charge is granted.

By the Attornment of the Termor to the Grantee of a Reversion, with Livery, and the Rent also, though no mention be made thereof. Before Attornment a man may not distrain, nor have any Action of Waste.

By Fine the Lord may have the Wardship of the Body and Lands, before the Attornment of his Tenant.

The end of Attornment is to perfect Grants, and therefore may not be made upon condition or for a time.

A Tenant that is to perfect a Grant by Attornment cannot consent for a time, nor upon a condition, nor for part of a thing granted; but it shall enure the whole absolutely.

If

If the Tenant have true notice of all the Grant, then such Attornment is void.

Attornment necessary upon a Devise.

CHAP. XXXIV.
LEASES.

A Lease for years must be for time certain, and ought to express the Term, and when it should begin, and when it should end certainly. And therefore a Lease for a year, and so from year to year during the life of *J.S.* but for two years it may be made by word or writing. If I lease to *J.N.* to hold untill 100 *l.* be paid, and make no Livery of Seizin, he hath Estate onely at will.

A Lease from year to year, so long as both the parties please, after Entry in any year it is a Lease for that year, &c. till warning be given to depart, 14 *H.*8.16.

A Lease beginning from henceforth shall be accounted from the day of the Delivery; from the making shall be taken inclusive from the day of the making, or of the Date exclusive.

If Lands discend to the Heir before his Entry, he may make a Lease thereof.

A man lets a Houſe *cum pertin'*, no Lands paſs: but if a man let a Houſe *cum omnibus terris eidem pertin'*, there the Lands therunto uſed paſs.

If a man lets Lands wherein are Cole Mines, Quarries, and ſuch like, if they have been uſed the Tenant may uſe them if they be not open; if the Tenant for them imploy them not on the Land, it is Waſte: likewiſe Marl. The Land is the place where the Rent is to be paid and demanded, if no other place between the parties be limited.

Treſpaſs is not given for paying of the Rent to the Leſſor, howſoever it be payable there.

And if a man let Lands without Impeachment of Waſte, and a ſtranger cut down the Trees, and the Leſſee doth bring an Action of Treſpaſs, he ſhall not recover for the value of the Trees, but for the Crop and burſting of his Cloſe, and the Heir of the Leſſor ſhall have ſuch Trees, and not the Executor of the Leſſee, unleſs they be cut by the Leſſee, and enjoyed by the Grantee without Waſte.

Leſſee for years or for life, Tenant in dower or by the courteſie, or Tenant in tail after poſſibility, &c. have onely a ſpecial intereſt or property in the Trees, being upon the Ground

Ground growing as a thing annexed unto the Land, ſo long as they are annexed thereunto.

But if the Leſſee or any other ſever them from the Land, the property and intereſt of the Leſſee in them is determined, and the Leſſor may take them as things that are parcel of his Inheritance, the Intereſt of the Leſſee being determined.

To accept the Rent of a void Leaſe will not make the Leaſe good, but avoidable it will.

If the Husband and Wife do purchaſe Lands to them and their Heirs of the Husband, and he make a Leaſe, and die; his Wife may enter, and avoid the Leaſe for her life: but if ſhe die, leaving the Husband, who afterward dies before the term ends, the Leaſe is good to the Leſſee againſt the Heir.

Where it is covenanted and granted to *J.S.* that he ſhall have 5 Acres of land in *D* for years, this is a good Leaſe, for *conceſſit* is of ſuch force as *dimiſit*.

If a man make a Leaſe for 10 years, and afterwards maketh another Leaſe for 21 years, the later ſhall be a good Leaſe for 11 years, when the firſt is expired.

If the Leſſee at his coſt do put Glaſs into the Window, he may not take the ſame away again,

again, but he ſhall be puniſhed for Waſte: and ſo of Wainſcot and Seeling, if it be not fixed with Screws.

Tenant in Tail may make a Leaſe for ſuch Lands or Inheritance, as have been commonly letten to farm, if the old Leaſe be expired, ſurrendred, or ended, within one year after the making of the new; but not without Impeachment of Waſte, nor above 21 years, or 3 lives, from the day of the making, reſerving the Old Rent or more, 32 *H.*8. by Indenture of Leaſe, by Tenant in Tail, for 21 years, made according to the form of the Statute, rendring the ancient or more Rent: if the Tenant in Tail die, it is a good Leaſe againſt his Iſſue: but if a Tenant in Tail die without Iſſue, the Donor may avoid this Leaſe by Entry, 32 *H.*8.28. And if he in the Remainder do accept the Rent, it ſhall not ſtop him, for that the Tail is determined, the Leaſe is determined and void, *Ed.*6.19.

The Husband may make ſuch a Leaſe of his Wifes Lands by Indenture, in the name of the Husband and Wife, and ſhe to ſeal thereunto, and the Rent muſt be reſerved to the Husband and his Wife, and to the Heirs of the Wife, according to her Eſtate of Inheritance.

A

A Leaſe made by the Husband alone, of the Lands of his Wife, is void after his death; but the Leſſee ſhall have his Corn.

By the Husband and Wife voidable, if it be not made as aforeſaid.

If a man do let Lands for years, or for life, reſerving a Rent, and do enter into any part thereof, and take the profit thereof, the whole Rent is extinguiſhed, and ſhall be ſuſpended during his holding thereof.

The acceptation of a Re-demiſe to begin preſently, is ſuſpenſion of the Rent before any Entry: otherwiſe of a Re-demiſe to begin *in futuro*.

Reſervations and Exceptions.

There are divers words by which a man may reſerve a Rent, and ſuch like, which he had not before, or to keep that which he had, as *tenendum, reſervandum, ſolvendum, faciendum*, it muſt be out of a Meſuage, and where a Diſtreſs may be taken, and not out of a Rent, and muſt be comprehended within the purport of the ſame word.

Exceptions of part ought always to be of ſuch things which the Grantor had in poſſeſſion at the time of the Grant.

The

The Heir shall not have that which is reserved, if it be not reserved to him by special words.

If a man make a Feoffment of lands, and reserve any part of the profits thereof, as the Grass or the Wood, that Reservation is void, because it is repugnant to the Feoffment.

A man by a Feoffment, Release, Confirmation, or Fine, may grant all his right in the land, saving unto him his Rent-charge, &c. Things that are given onely by taking and using, as Pasture for four Bullocks, or two loads of Wood, cannot be reserved but by way of Indenture, and then they shall take effect by way of Grant of the Grantor, during his life and no longer without special words.

Exceptions of things, as Wood, Mines, Quarry, Marl, or such like, if they be used, it is implied by the Law that they shall be used; and the things without which they cannot be had, is implied to be excepted, although no, &c.

But otherwise, if they be not used, then the way and such like must be excepted.

An Assignee may be made of lands given in Fee, or for life, or for years, or of a Rent-charge, although no mention be made of the Assignee in the Grant. But

But otherwise it is of a Promise, Covenant, or Grant or Warranty.

If a lessee do assign over his term, the lessor may charge the lessee or assign at his pleasure.

But if the lessor accept of the Rent of the Assignee, knowing of the Assignment, he hath determined his acceptation, and shall not have an Action of Debt against the lessee, for Rent due after the Assignment.

If after the Assignment of the lessee the lessor do grant away his Reversion, the Grantee may not have an Action of Debt against the lessee.

If a lessee do assign over his Interest and die, his Executor shall not be charged for Rent due after his death.

If the Executor of a lessee do assign over his Interest, an Action of Debt doth not lie against him for Rent due after the Assignment.

If the lessor enter for a Condition broken, or the lessee do surrender, or the Term end, the lessor may have an Action of Debt for the Arrearages.

A lease for years rendring Rent, with a Condition, that if the lessee assigneth his term, the lessor may re-enter. The lessee assigneth, the lessor receiveth the Rent of the hands of

the

the Assignee, not knowing of the Assignment, it shall not exclude the Lessor of his Entry.

A thing in a Condition may be assigned over for good cause as just debt: as whereas a man is indebted to me 20 *l.* and another do owe him 20 *l.* he may assign over his Obligation unto me in satisfaction of my Debt, and I may justifie the suing for the same in the name of the other at my own proper costs and charges.

Also where one hath brought an Action of Debt against *J.N.* which promiseth me that if I will aid him against *J.N.* I shall be paid out of the summe; in demand I may aid him.

An Assignee of Lands if he be not named in the Condition, yet he may pay the money to save his Land.

But he shall receive none if he be not named: the tender shall be to the Executor of the Feoffees.

Assignee shall always be intended, he that hath the whole Estate of the Assignor, that is assignable. A Condition is not assignable, and not of an Executor or Administrator. If there be such an Assignee, the Law will not allow an Assignee in the Law, if there be an Assignee indeed: so long as any part of the Estate remaineth to the Assignor, the tender ought to be made to him or his Heirs, it serveth: yet a co-

colourable payment to the Heir ſhall not veſt the Eſtate out of the Aſſignee, as a true payment will, *viz.* Covenant.

CHAP. XXXVI.
SURRENDERS.

A Surrender is an Inſtrument teſtifying with apt words, that the particular Tenant of Lands or Tenements, for life or years, doth ſufficiently conſent, that he which hath the next immediate Remainder or Reverſion thereof, ſhall alſo have the particular Eſtate of the ſame in poſſeſſion; and that he yieldeth or giveth the ſame to him for ever. Surrender ought forthwith to give a preſent poſſeſſion of the thing ſurrendred unto him which hath ſuch an Eſtate, where it may be drowned.

A Joynt Tenant cannot ſurrender to his Fellow.

Eſtating of things that may not be granted without a Deed, may be determined by the ſurrender of the Deed to the Tenant of the Land.

Leaſe for years cannot ſurrender before his term begin; he may grant, he cannot ſurrender part of his Leaſe.

Surrenders are in two manners, in Deed, in Law.

A Surrender in Law is when the Lessee for years doth take a new Lease for more years.

A Surrender in Deed must have sufficient words to prove the assent and will of the Surrenderer to surrender, and that the other do also thereunto agree.

The Husband may surrender his Wifes Dower for his life, and her Lease for ever.

By Deed indented a man may surrender upon Condition.

CHAP. XXXVII.
RELEASES.

A Release is the giving or discharging of a Right or Action, which a man hath or claimeth against another, or out of or in his Lands.

A Release or Confirmation made by him that at the time of the making thereof had no right, is void: if a right come to him afterwards, unless it be with Warranty, and then it shall bar him of all right that shall come to him after the Wrrranty made.

Re-

Releaſe or Confirmation made to him that at the time of the Releaſe or Confirmation made had nothing in the lands, is void, but behoveth him to have a Freehold or a Poſſeſſion and Privity.

A Releaſe made to a Leſſee for years before his Entry is void.

A man may not releaſe upon a Condition, nor for time, nor for part; but either the Condition is void, and the Time is void, and the Releaſe ſhall enure to the party to whom it is made for ever, for the whole, by way of Extinguiſhment. But a man may deliver a Releaſe to another as an Eſcrow, to deliver to *J.S.* as his act and deed, if *J.S.* do perform ſuch a thing: or Releaſe upon a Condition by Deed indented, may be good.

A Joynt Tenant or a Rent-charge may releaſe, yet all the Rent is not extinct, nor yet if he purchaſe the lands, his Fellow ſhall have the Rent ſtill.

If the Grantee releaſe parcel of a Rent-charge to the Grantor, yet all the Rent is not extinct.

A Releaſe to charge an Eſtate ought to have theſe words, Heirs, or words to ſhew what Eſtate he ſhall have.

A Releaſe made to him that hath a Reverſion or a Remainder in Deed, ſhall ſerve and help him that hath the Franktenement: ſo ſhall a Releaſe made to a Tenant for Life or a Tenant in Tail, inure to him in the Reverſion or Remainder, if they ſhew it; and ſo to Treſpaſſors and Feoffors, but not to Diſſeizors.

A Releaſe of all manner of Actions doth not take away an Entry, nor the taking of ones Goods again, nor is any plea againſt an Executor.

A Releaſe of all Demands extinguiſheth all Actions real and perſonal, Appeals, Executions, Rent-charge, Common of Paſture, Rent-ſervice, and all Right and Seizure, and all right in Lands and property in Chattels: but not a poſſibility or future duty, as a Rent payable after my death, and ſuch like.

CHAP. XXXVIII.
CONFIRMATION.

COnfirmation is when one ratifieth the Poſſeſſion, as by Deed to make his Poſſeſſion perfect, or to diſcharge his Eſtate that may be defeated by anothers Entry.

As if a Tenant for life will grant a Rent harge in Fee, then he in the Reverſion may onfirm the ſame Grant: whereas a man by is Entry may defeat an Eſtate, there by his eed of Confirmation he may make the Eate good.

A Confirmation cannot charge an Eſtate hat is determined by expreſs Condition or imitation. To confirm an Eſtate for an hour, it be for Tenant for life, it is good for life; to Tenant in fee, for ever.

A Leaſe for years may be confirmed for a me, or upon condition, or for a piece of the and: but if a Franktenement be, it ſhall en- re to the whole abſolutely.

A Confirmation to charge an Eſtate, muſt ave words to ſhew what Eſtate he ſhall ave.

To confirm the Eſtate of Tenant for life o his Heirs, cannot be but by *Habend'*, the and to him and his Heirs: and therefore it good to have ſuch an *Habend'* in all Con- rmations.

In a Confirmation new Service may not be eſerved, and old may be abridged.

A Confirmation made to one Diſſeizor hall be voidable to the other; ſo ſhall not a eleaſe.

CHAP. XXXIX.
CONDITION.

THere are two manners of Conditions, one expreſſed by words, another implied by the Law; the one called a Condition in Deed, the other a Condition in Law.

Eſtate made, and the Condition againſt the Law, the Eſtate's good, the Condition's void.

If the Eſtate beginneth by the Condition, then both are void.

Bonds with Conditions expreſly againſt the Law are void.

Conditions repugnant, the Eſtate good, the Conditions void.

Conditions impoſſible are void, the Eſtate good: it ſhall not enlarge any Eſtate.

By pleading a man may not defeat an Eſtate of Franktenement, by force of a Condition in Deed, without he ſhew the Condition of Record, or in writing ſealed; yet the Jury may help a man where the Judges will take their Verdict at large: of Chattels he may.

Promiſe doth make a Condition, but when it doth depend upon another Sentence, or hath reference to another part of the Deed,

it

it maketh no Condition, but a qualification or limitation of the Sentence, or of that part of the Deed, as provided that the person of the Grantee shall not be charged.

He which hath Interest in a Condition may fulfill the same for safeguard of himself.

Between the parties it is not requisite the Condition be performed in every thing if the other do agree: but to a stranger it must.

If the Obligee be party to any Act by which the Condition cannot be performed, then the Obligor shall be discharged: so he shall be by the Act of the Condition.

Where the first Act in the Condition is to be performed by the Obligee, and he will not do it, there the Obligation is not forfeited.

Where no time is set, if the Condition be for the good of a stranger, or of the Obligee, then it is to be performed within convenient time, if for the good of the Obligor at any time during their lives; immediately shall not have such a strict construction, but that it shall suffice if it be done in convenient time.

If a man be bound tn pay Money, or farm Rent, he must seek the parties: but if he be bound to perform all payment, if he render his Farm on the land it sufficeth.

If the Feoffee or Feoffor die before the day of payment, the tender ſhall be to the Executor, although the Heir of the Feoffee do enter, if the Heir be not named. *Vide Aſſignee in Aſſignment.*

The money muſt be tendered ſo long before Sun ſet, that the Receiver may ſee to tell it.

To pay part of a Summe at the day cannot be ſatisfaction for the whole Summe; as a Horſe or a Robe is. But before the day, or at another place, at the day of the requeſt, and acceptance of the Obligee, is full ſatisfaction.

An Acquittance is a good bar if nothing be paid.

In all caſes of Conditions a payment of a certain Summe in groſs, touching Lands or Tenements, if lawful tender be once refuſed, he which made the tender is diſcharged for ever.

And the manner of the tender and payment ſhall be directed by him that made it, and not by him that did accept it, as that he paid the Summe in full ſatisfaction, and that he accepted thereof in full ſatisfaction.

An Acquittance is a good bar, &c.

Where a man is bound to pay money to make a Feoffment, or renounce an Office, or the like, and no time is limited when he ſhall do

do it, then upon requeſt he is bound to perform it in ſo ſhort a time as he may.

But where the time is limited, if he do refuſe before the day it is no matter, if he be ready to perform it at the day.

Where a Covenant or Condition is to marry or enfeoff a ſtranger by ſuch a day, the refuſal of the ſtranger is no plea, as that of the Obligee is. The Obligee is to be ready on the Land at his own peril; a ſtranger muſt be requeſted; if he refuſe, the Obligation is forfeited: wherefore it is good to have theſe words, *If the ſtranger do thereunto aſſent.*

Entry.

The Determination of an Eſtate is not effected before Entry.

When any perſon will enter for a Condition broken, he muſt be ſeized on the ſame courſe and manner he was when he departed from his Poſſeſſion.

It behoveth ſuch perſons as will re-enter upon their Tenants to make a demand of the Rent.

If the Leſſor demand before he die, his Heir may enter.

If the Leſſor diſtrain he may not re-enter.

The Lessor may accept of the Rent, and yet re-enter: but if he receive the next Rent, he may not, for that establisheth the Lease.

Entry into one Acre in the name of more is good: it doth not extend into two Counties,

By the Entry of the Husband the Frankte-nement shall be in the Wife: and so of such like.

In Gavilkind Land the eldest Son onely shall enter for the breach of a Condition.

DEMAND.

The Land is the place where the Rent is to be paid and demanded, if there be no other place appointed.

And there the Lessor himself, or his sufficient Attorney, a little before Sun-set, in the presence of two or three sufficient Witnesses shall say, Here I demand of *J.B.* 10 *l.* due to me at the Feast of, &c. for a Mesuage, &c. which he boldeth of me in Lease by Indenture, &c. and there remain the last day the Rent is due to be paid, untill it be so dark that he cannot see to tell the Money.

CHAP.

CHAP. XL.
WARRANTIES.

THere are three manner of Warranties, Lineal, Collateral, By Diſcent.

Warranty Lineal is where a man by his Deed bindeth him and his Heirs to Warranty, and dieth, and the Warranty doth diſcend to his Iſſue.

Warranty Collateral is in another line, ſo that he to whom it diſcendeth cannot convey the Title that he hath in the Teſtaments by him that made Warranty.

Warranty by Diſſeizin is where he which hath no right to enter entereth, and maketh a Warranty: this is by Diſſeizin, and barreth not.

Lineal Warranty barreth him that claimeth Fee, and alſo Fee Tail with Aſſets in Fee: if he ſell his Son may have a *Formedon.*

Collateral Warranty is a Bar to both, except in ſome caſes that be remedied by Statute, as Warranty by Tenement, by the Courteſie, except he hath enough by Diſcent by the ſame Tenement.

Tenant.

TENANT

In Dower for life, not remedied, but do bar the Heir and him in Reverſion.

A Warranty diſcendeth always to the Heir at the Common Law, *viz.* the eldeſt Son, and followeth the Eſtate, and if the Eſtate may be defeated, the Warranty may alſo.

It barreth not the ſecond Son in Gavilkind, although all the Sons ſhall be vouched, and not the eldeſt Son alone: yet he onely ſhall be barred.

To plead a Warranty againſt him that made it or his Heirs, is called a *Rebutter*.

Where Fee or Franktenement is warranted, the party ſhall have no advantage if he be not Tenant.

Where a Leaſe for years is warranted, it ſhall be taken by way of Covenant, and good if he be outed.

The Feoffor by the words of *dedi & conceſſi* ſhall be bound to Warranty during his own life.

CHAP.

CHAP. XLI.
COVENANTS.

COvenants are of two sorts, expressed by words in the Deed, or implied by the Law. A Covenant in Deed is an Agreement made by the Deed in writing between two persons, to perform some things and sealed: for no Writ of Covenant is maintainable without such a Specialty but in *London*, *&c.*

When a Covenant doth extend to a thing in being parcel of the Demise, or thing to be done by force of the Covenant is *quodammodo* annexed, or appertaining to the thing demised, and goeth with the Land, it shall bind the Assignee if he be not named: as to repair the Houses, it shall bind all that shall come to the same by the act of the Law, or by the act of the Party.

But if the Covenant do concern the Land, or thing demised in some sort, the Assignee shall not be charged although he be named; as to make a Wall at another bodies House, or to pay a Summe of Money to the Lessor or to a stranger; but the Lessee his Executors and Administrators shall be charged.

If

If the Covenant do extend to a thing that had no being, but to be made new upon the land, it ſhould bind the Aſſignee if he be named, becauſe he ſhall have the benefit of it.

If a man make a leaſe for years, and the leſſee covenanteth and granteth to pay, &c. to the leſſor, his heirs and aſſigns, yearly during, &c. ten pounds, his Executors ſhall have it.

A Covenant in Law upon a Demiſe or Grant, the Aſſignee in deed or in law may have a Writ of Covenant.

An Obligation to perform all Covenants and Grants is forfeit on the breach of a Covenant in law.

A Covenant in law is not broken but by an elder title.

A Covenant in law may be qualified by the mutual conſent of the parties.

CHAP. XLII.

How Chattels Perſonal may be bargained, ſold, exchanged, lent, and reſtored.

A Contract is properly where a man for his Money ſhall have by the aſſent of another certain Goods, or ſome other profit at the time of the Contract, or after.

In all Bargains, Sales, Contracts, Promises, and Agreements, there must be *quid pro quo* presently, except day be given expresly for the payment, or else it is nothing but Communication.

If a man do agree for a price of Wares, he may not carry them away before he hath paid for them, if he have not day expresly given him to pay for them.

But the Merchant shall retain the Wares untill he be paid for them; and if the other take them, the Merchant may have an Action of Trespass or an Action of Debt for the Money at his choice.

If the bargain be that you shall give me 10 *l.* for my Horse, and you do give me 1 *d.* in earnest, which I do accept; this is a perfect bargain, you shall have the Horse by an Action of the case, and I shall have the Money by an Action of Debt.

If I say the price of a Cow is four pounds, and you say you will give me four pounds, and do not pay me presently, you may not have her afterwards except I will, for it is no contract. But if you go presently to telling of your Money, if I sell her to another, you shall have your Action of the case against me.

If

If I buy an hundred loads of Wood to be taken in such a Wood at the appointment of the Vendor; if he upon request will not assign them unto me, I may take them, or I may sell them: but if a stranger do cut down any part of the Trees, I may not take them, but I may supply my Grantee of the residue, or have my Action of the Case.

If the bargain be, that I shall give you 10 *l.* for such a Wood, if I like it upon the view thereof; this is a bargain at my pleasure upon my view: and if the day be agreed upon, if I disagree before the day, if I agree at the day, the bargain is perfect, although afterwards I do disagree. But I may not cut the Wood before I have paid for it; if I do, an Action of Trespass will lie against me, and if you sell it to another, an Action of Trespass on the case will lie against you.

If I sell my Horse for money, I may keep him untill I am paid; but I cannot have an Action of Debt untill he be delivered, yet the property of the Horse is by the bargain in the Bargainor or Buyer: but if he do presently tender me my money, and I do refuse it, he may take the Horse, or have an Action of Detainment. And if the Horse die in my Stable between the bargain and the delivery, I may have an Action of Debt for my mo-

money, because by the bargain the property was in the Buyer.

If a Deed be made of Goods and Chattels, and delivered to the use of the Donee, the property of the Goods and Chattels are in the Donee presently. Before any Entry or Agreement the Donee may refuse them if he will.

If I take a Horse of another mans, and sell him, and the Owner take him again, I may have an Action of Debt for the money, for the bargain was perfect by the delivery of the Horse, *& caveat emptor*. Every Contract importeth in it self an Assumption; for when one doth agree to pay money, or deliver a thing upon consideration, he doth as it were assume and promise to pay and deliver the same, and therefore when one selleth any Goods to another, and agreeth to deliver them at a day to come: and the other in consideration thereof agreeth to pay so much money on the delivery, or after; in this case he may have an Action of Debt, or an Action on the Case upon the Assumption.

The duty to resign an Action personal may not be apportioned: as if I sell my Horse and another mans for 10 *l.* who taketh his Horse again, I shall have all the money.

If

If a man retained a Servant for 10 *l. per an.* and he depart within the year, he can have no wages: if it were to be paid at two Feasts, and the man after the first Feast die, he shall have wages but for the first Feast: therefore men take order for it in their Wills.

By a Contract made in a Fair or Market the property is altered, except it be to the King, so that the Buyer know not of the former property, and do pay Toll, and enter it: and those things as thereupon ought to be done, it must be on the Market, and at the place where such things are usually sold, as Plate at the Goldsmiths Stall, and not in his inner shop.

In exchange of a Horse for a Horse, or such like, the bargain is good without giving of day or delivery.

If a thing be promised by way of recompence for a thing that is past, it is rather an Accord then a Contract; and upon an Accord there lieth no Account, but he unto whom the promise is made, may have charge by reason of the promise, which he hath also performed; then he shall have an Account for the thing promised, though he that made the promise hath no profit thereby: as if a man say to another man, Heal such a poor man,

man, or make such a High Way, &c.

The intent of the party shall be taken according to the Law, as if a man retain a Servant, and do not say one year, or how long he shall serve him, it shall be taken for one year according to the Statute.

In all Contracts he that speaketh obscurely or ambiguously is said to speak at his own peril, and such speeches are to be taken strongly against himself.

CHAP. XLIII.

Of Lending and Restoring.

IF Money, Corn, Wine, or suh other things, which cannot be re-deliver'd, be occupied on borrowed, if it perish, it is at the peril of the borrower.

But if a Horse or a Cart, or such other things, as may be used and delivered again, be used in such manner as they were lent, if they perish, he that oweth them shall bear the loss, if they perish not through the default of him that did borrow them, or that he did make a promise at the time of delivery to re-deliver them safe again. If they be occupied in any other wise then according to the lending, in what wise soever it perish; if it be

be not in default of the Owner, he that did borrow them shall be charged with them in Law and Conscience.

If a man have Goods to keep a certain day, he shall be charged or not charged after as default or defaults are in him.

But if he have any thing for keeping them safe, or make promise to re-deliver them, he shall be charged with all chances that may fall because of his promise.

If a man find Goods of another mans, if they be hurt or lost by the negligence of him that found them, he shall be charged to the Owner.

If a common Carrier go by ways that be dangerous for robbing, and will drive by night, or other unfit times, and is robbed: or if he do overcharge his Horses, or driveth so that his Stuff fall into the water, or otherwise be hurt by his default, he shall be charged by his default

And if a Carrier would percase refuse to carry, unless a promise were to him, that he shall not be charged with any such misdemeanour, that promise were void.

Every Inholder is bound by the Law *bona & catalla* of his Guest to keep in safety, so long as it is within the Inn, if the Guest did not deliver them unto him, nor acquaint him with them. He

He shall not be charged if the Servant or Companion of the Guest do imbezel them; or if the Guest do leave them in the outward Court.

The Horsler shall not answer for the Horse that is put to pasture at the request of the Guest; but if he do it of his own head, he shall.

If any man offer to take away my Goods, I may lay my hands upon him, and rather beat him then suffer him to take or carry them away.

CHAP. XLIV.

How far other Mens Contracts and Misdemeanors do bind us.

A Man shall be bound by many Trespasses of his Wife, but not to sustain corporal punishment for it.

For Murder, Felony, Battery, Trespass, Borrowing or Receiving of money in his Masters Name by a Servant, the Master shall not be charged unless it be done by his command, or came to his use by his assent.

If I command one to do a Trespass, I shall be a Trespassor; or otherwise if I do but consent. There is no Accessary in Trespass.

We

We shall be charged if any of our Family lay or cast any thing into the High Way, to the noisance of His Majesties Liege People.

Every man is bound to make recompence for such hurt as his beasts shall do in the Corn or Grass of his Neighbour, though he knew not that they were there; and for his Dogs, Bears, &c. if they hurt the Goods or Chattels of any other, for that he is to govern them.

A man shall not be charged by the Contract of his Wife or his Servant, if the thing come to his use, having no notice of it. But if he command them to buy, he shall be charged though they come not to his use, or had notice thereof.

If a Wife or Servant use to buy or sell, if he sell his Masters Horse, and exchange his Ox for Wheat that cometh to his Masters use, his Master may not have an Action of Trespass for it, but he shall be charged for the Corn, and the other need not to shew that he had Warrant to buy for him.

If a man-servant that keepeth his shop, or that useth to sell for him, shall give away his Goods, he shall have Trespass against the Donee.

But if I deliver my Goods to another to keep to my use, and he do give them away, I shall

ſhall not; for the Donee had notice whoſe Goods they were, as in the caſe of the Servant.

If a man make another his general Receiver, which receiveth money, and maketh an Acquittance, and payeth not his Maſter, yet that payment diſchargeth the Debtor.

If a Servant keep his Maſters fire negligently, an Action lieth againſt the Maſter: otherwiſe if he bear it negligently in the ſtreet.

If I command my Servant to diſtrain, and he doth ride on the Diſtreſs, he ſhall be puniſhed, not I.

If a man command his Servant to ſell a thing that is defective, generally to whom he can ſell it; Deceit lieth not againſt him: otherwiſe if he bid him ſell it to ſuch a man, it doth.

A Contract or a Promiſe made to the wife is good, when the husband doth agree: ſo it is to a Servant; and it ſhall be ſaid to be made to the husband and maſter himſelf.

If a man taketh a Wife that is in debt, he ſhall be charged with her debts during her life; if ſhe die, he ſhall be diſcharged.

CHAP. XLV.
Wills and Testaments.

HAving hitherto treated of such Contracts as do take effect in the life time of the Parties, with their differences, it is now to deal with Instruments which take effect after their deaths, that those things which they have preserved with care, & gotten with pains in their life, might be left to their Posterity in peace and quietness, after their death: of which sort are last Wills and Testaments.

There are two sorts of Wills, Written and Nuncupative.

A Nuncupative Testament is when the Testator doth by Word onely without Writing declare his Will before a sufficient number, of his Chattels onely; for Lands pass not but by Writing. It may for the better continuance after the making be put in Writing, and proved: but it is still a Testament Nuncupative.

A written Testament is that, which at the very time of the making thereof is put in writing, by which kind of Testament in writing

ting onely Lands and Tenements pass, and not by word of mouth onely.

Two things are required to the perfection of a Will by which Lands pass, *viz.* first, Writing, which is the beginning; secondly, the death of the Devisor, which is the finishing.

In a Will of Goods there must be an Executor named: otherwise of Lands.

A man may make one Executor or more simply, or conditionally for a time, or for parcel of his Chattels.

If no Executor be named, then it still retaineth the name of a last Will, and shall be annexed to the Letters of Administration in regard of the Gift.

Gavilkind Lands may be devised by Custom.

Lands holden in Soccage tenure are all devisable in writing, but Knights Service two parts in three.

Fear, Fraud, and Flattery, three unfit accidents to be at the making of a Will.

A Woman may make a Will of the Goods of her Husband by his consent and licence: by word is sufficient, and of the Goods she hath as Executor without his consent; but she cannot give them unto him.

A Boy after his age of Fourteen, and a Maid after her age of Twelve, may make a Will of their Goods and Chattels by the Civil Law.

The Will of the Donor shall be always observed, if it be not impossible, or greatly contrary to the Law.

A Devisor is intended *inops consilii*, and the Law shall be his Counsel, and according to his intent appearing in his Will, shall supply the defect of his words.

A Prerogative Will is 5 *l.* in another Diocese.

A man may not traverse the Probate of a Testament, or Letters of Administration directly, but he may say against the Testament, that the Testator never made the party his Executor.

CHAP. XLVI.
DEVISES.

A Devise ought to be good and effectual at the time of the death of the Devisor.

The Devisee may not enter into the term, or take a Chattel, but by the delivery of the Executor.

But he may sue for it in Court Christian.

Into Franktenement or Inheritance he may nter.

Devisees are Purchasees: as if a Lease for ears be willed to a man and his Heirs, the eir shall have it; for Heir is a name of Purhase here.

A Reversion of Lands or Tenements will ass by the name of Lands and Tenements a Devise.

If a man devise all his Lands and Tenements; a Lease for years doth not pass here he hath Lands in Fee, and also a Lease here, otherwise it will.

If a man devise all his Goods, a Rentharge which he had for years will pass, and other his personal Chattels.

And if a man give all his Moveables to e, he shall have all his Horses, Cattel, Pans, nd personal Chattels; and all his Immoveles to another, he shall have all his Corn owing, and Fruit on his Trees, and the hattels real.

A man may devise Lands or Goods to an fant in the Mothers belly, or Goods to the hurchwardens of *D*.

There is great diversity where the properis devised; and when the Occupation is evised a man may devise, that a man shall ve the Occupation of his Plate, or other

Chattels during his life or for years, and if he die within the term, that it shall remain to *M.A.* and it is good; for the first hath but the occupation, and the other after him shall have the property.

But if a Chattel be given to one for life, the Remainder to another, the Remainder is void.

For a Grant or Devise of a Chattel for an hour is good for ever, and the Devisee may dispose of it; but if he do not, the other shall have it.

A man may devise his Lands he holdeth in Lease, but not his Lease, under this condition; provided that if the Devisee die within the term, then he shall have it.

If a man will his Goods to his Wife, and that after her decease his Son and Heir shall have the House wherein they are; she shall have the House for term of her life, yet it is not devised unto her by express words. But it doth appear that his intent was so by the words.

If a man willeth his Lands to his Wife till his Son cometh to the Age of 21 years, and the Woman taketh another Husband and dieth, the Husband shall have the Interest.

By a Devise a man may have the Fee Simple without expres words of Heirs: as if Lands be willed to a man for ever, or to have and to hold to him and to his Assigns, &c.

By Will Lands may be entailed without the word Body: as if Lands be given to a man and his Heirs male, it doth make an Estate Tail.

If a man will that his Executors shall sell his Lands, the Inheritance doth descend to the Heir: yet the Executors may enter and enfeoff the Vendee.

But if Lands be given to the Executor to sell, and they receive the profits thereof to their own use, and do not sell the same in reasonable time, the Heir may enter.

An Executor may sell if the others will not.

If Lands be recovered against Tenant for life or for years, by an Action of Waste or former Title, he may not give his Corn.

If the Cognizee have sown the Lands, and the Cognizor bring a *Scire*, he may give the Corn sown.

If a man devise *omnia bona & catalla*, Hawks nor Hounds do not pass, nor the Deer in the Park, nor the Fish in the Ponds.

CHAP. XLVII.
EXECUTORS.

AN Executor is he that is named and appointed by the Testator to be his Successor in his stead to enter, and to have his Goods and Chattels, to use Actions against his Debtors, and Legacies so far as his Goods and Chattels will extend.

Where two Executors are made, and one doth prove the Will, and the other doth refuse, notwithstanding he that refuseth may administer at his pleasure, and the other must name him in every action for every duty due to the Testator, and his Release shall be a good bar. If he do survive he may administer, and not the Executor of him that died but otherwise if all had refused.

If one prove the Will in the name of both, he that doth not administer shall not be charged.

If the Executor do once any action that is proper to an Executor, as to receive the Testators Debts, or to give Acquittance for the same, &c. he may not refuse.

But other acts of Charity or Humanity he may do, as to dispose of the Testators Goods about the Funeral, to feed his Cattel left the

periſh, or to keep his Goods leſt they be-ſtolen: theſe things may every one do without danger.

When Executors do bring an Action it ſhall be in all their names, as well of them that do refuſe as of others.

But an Action muſt be brought againſt him that doth adminiſter onely, and he which firſt cometh ſhall firſt anſwer.

An Executor of an Executor is Executor to the firſt Teſtator, and ſhall have an Action of Debt, Accompt, &c. or of Treſpaſs, as of the Goods of the firſt Teſtator carried away, and Execution of Statutes and Recognizances, &c. 25 *Ed.* 5.

The Title and Intereſt of an Executor is by the Teſtament, and not by the Probate; but without ſhewing it they may releaſe the Probate.

The Juſtices will not allow them to ſue Actions.

The Executor ſhall have the Wardſhip of the Body and Lands of the Ward in Knights ſervice, but not in Soccage and Leaſes for years, and Rent-charges for years, Statutes, Recognizances, Bonds, Lands in Execution, Corn upon the ground, Gold, Silver, Plate, Jewels, Money, Debts, Cattel, and all other Goods and Chattels of the Teſtator, if they

be not deviſed, and may deviſe them: but if he do will *omnia bona & catalla ſua*, the Goods of the Teſtator paſs not, neither ſhall they be forfeited by the Executor.

An Executor is chargeable for all Duties of the Teſtator that are certain, but not for Treſpaſs, nor for Receipt for Rents, nor for occupation of Lands, as Bailiff or Guardian in Soccage, &c. for this is not any Duty certain ſo far as he ſhall have Aſſets. If the Executor do waſte the Goods of the Teſtator, he ſhall pay them of his own.

An Executor ſhall not be charged but with ſuch Goods as come to his hands; but if a ſtranger take them out of his poſſeſſion, they are Aſſets in his hands.

If an Executor take Goods of another mans amongſt the Goods of the Teſtator, he ſhall be excuſed of the taking in Treſpaſs.

Duties by matter of Record ſhall be ſatisfied before Duties by Specialty, and Duties by Specialty before Charges, and Legacies before other Duties.

An Executor may pay a Debt or Credit of ſome kind, depending the Writ, before notice of the Action, but not after notice or Iſſue joyned.

An Executor may pay Debts with his own money, and retain ſo much of the Teſta-

tors

tors Goods, but not Lands appointed to be sold.

Any of these words, *debere*, *solvere*, *recipere*, borrowed, or any word that will prove a man a Debtor or to have the money, if it be by Bill will charge the Executor or Administrator, but not the Heir if he be not named.

CHAP. XLVIII.
ADMINISTRATORS.

AN Administrator is he to whom the Ordinary of the place, where the Intestate dwelt, committeth the Testators Goods, Chattels, Credits, Rights.

For whersoever a man dieth intestate, either for that he was so negligent he made no Testament, or made such an Executor as refused to prove it, or otherwise is of no force; the Ordinary may commit the Administration of his Goods to the Widow, or next of kin, or to both, which he pleaseth, making request, and revoke it again at his pleasure.

The Ordinary may assign also a Tutor to the Intestates Children, to his Sons untill 12 years.

But so that it may be not a prejudice to him that is the Guardian: and after those years he or she may respectively chuse their own Curators, and the Guardian may confirm them, if there be no good order taken by their Fathers Will.

As if such a Tutor die, the Infant cannot have an Action of Account against his Executor.

The power and charge of an Administrator is equal in every point to the power and charge of an Executor. A man may have an Action of the Case against the Executor or Administrator upon the Assumption of the Testator, upon good consideration, or Debt for Labourers wages, by the Statute.

And if a man make an Infant his Executor, the Ordinary may commit the Execution of the Will of the Tutor of the Child to the Childs behoof, untill he be of the age of 17 years and if he be granted for longer time it is void.

An Administrator *durante minoritate* may do nothing to the prejudice of the Infant, he may not sell any of the Goods of the deceased, unless it be upon necessity, as for the payment of Debts, or that they would perish; nor let a Lease for a longer time then whilest he is Executor.

An

An Infant upon the true payment of a Debt due to the Teſtator may make an Acquittance, and it ſhall be good.

For a Child may better his Eſtate, but not make it worſe.

CHAP. XLIX.
HEIR.

IF a man die ſeized of any Lands, and do not diſpoſe of them by his Will, they deſcend to his Heir, as aforeſaid.

And he ſhall have not onely the Glaſs and Wainſcot, but any other of ſuch like things affixed to the Freehold or Ground, as Tables dormant, Furnaces, Vats in the Brewhouſe or Dyehouſe, and the Box or Cheſt wherein the Evidences are, the Hawks and the Hounds, the Doves in the Dovehouſe, the Fiſh in the Pond, and the Deer in the Park, and ſuch like.

He ſhall be charged by Specialty for the Debts of his Anceſtor, ſo long as he hath Affets, if the Executor or Adminiſtrator have not ſufficient.

No Law nor Statute doth charge the Heir for the wrong or treſpaſs of his Father, but by expreſs words.

Wi-

WIDOW.

The Widow ſhall have all her Apparel, her Bed, her Copher, her Chains, Borders, and Jewels, by the honourable Cuſtom of the Realm, except her Husband unkindly give any of them away. Or be it in Debt, that it cannot be paid without her Bed, &c. yet ſhe ſhall have her neceſſary Apparel.

What things are arbitrable, and what not.

Things and Actions Perſonal incertain are arbitrable, as Treſpaſs, taking away of a Ward, &c.

But things certain are not arbitrable, but when the Submiſſion is by Specialty, if they be not joyned with others incertain, as Debt with Treſpaſs.

Matters concerning the Commonwealth, ſome are not arbitrable, as Criminal Offences, Felonies and ſuch like, concerning the Crime.

In the Submiſſion three things are to be regarded.

Firſt, that it be made in Writing with the parties Covenants, or Bonds ſubſequent and ſufficient to bind them, their Heirs, Executors,

tors, and Assigns to perform the Award which shall be thereupon made, that both the Arbitrators may know their power, and the parties revoke not their power: for all is void that is not contained in the Submission, or necessarily depending thereupon; and the Arbitrators labour is lost, if they want means to compell the same to be executed.

Secondly, that there be power given to them sufficient to do all things necessary for the ordering of the Controversies, as to appoint times and places for their Meetings, to examine and decide the matters committed, and to bring their parties with their proofs, evidences, and witnesses thither together before them, and to punish the place defective, and to expound and correct such doubtful sentences and questions, as may arise upon their Award, afterwards inconvenient to either parties, contrary to equity and the Arbitrators good meaning: which inconveniencies were not before by them seen at the making of the Award. *Temporis Filia Veritas.*

Thirdly, convenient time and place are to be limited for the yielding up their Award to the parties, or to their Assigns.

Six things to be regarded in an Arbitrament.

1. That it be made according to the very submission touching the things committed, and every other circumstance.

2. That it be a final end of all Controversies committed.

3. That it appoint either party to give or do unto the other something beneficial, in appearance at least.

4. That the performance be honest and possible.

5. That there be a mean how either part by the Law may attain unto that which is thereby awarded unto him.

6. That every party have a part of the Award delivered unto him.

For if it fail in any of these points, then is the whole Arbitrament void, and of none effect.

Examples thereof.

1. An Award that the parties shall obey the Arbitrament of *A.M.* is void, for power may not be assigned.

An Award that any of the parties shall be bound or do any other act by the advice of the Arbitrator, is not good except it be in the

the ſubmiſſion ſo; but that the parties ſhall be bound, or make aſſurance by the advice of Counſel, is good.

2. An Award, that the parties ſhall be non-ſuited, is not good, becauſe it is no final end, for the party may begin again: that the party do withdraw his ſuit, is good.

If the Submiſſion be of divers things, and the Award onely of ſome of them, yet is the Award good for that part, as if the Submiſſion be of all Actions real and perſonal onely, or if it be onely *de poſſeſſione*.

3. If to ſubmit themſelves to the Arbitrament of all Treſpaſſes, and it is awarded that the one ſhall make amends to the other, and nothing is awarded for the others benefit; this award is void.

So it were if one of them ſhould go quite againſt the other, if the Submiſſion were not by Bond, for an Award muſt be final, obligatory, and ſatisfactory to both parties.

An Award, that either party ſhall releaſe to the other all Actions, and that becauſe the one hath treſpaſſed more then the other, he ſhall pay to the firſt, is good.

In Debt or Treſpaſs of Goods taken, that the Defendent ſhall retain part, and the Plaintiff to have the reſt, is not good.

4. An

4. An Award that one of the parties shall do an act to any stranger, the act is void if the parties be not bound.

Or if it be that he shall cause a stranger to enfeoff, or be bound to the other party, because he hath no means to compel the stranger.

5. An Award is void if it be neither executed, nor any means by Law for the execution thereof: as if it should be awarded, that one should pay the other 10 *l.* this is good, for he may recover the same by an Action of Debt. But if it were awarded, the one should deliver to the other an Acre of Land, or do such like act Executory, it were void if it be not delivered streight way, or provision made by Bond or otherwise, to compell the payment thereof according to the Award, if the Submission be not by Specialty.

6. Indentures of Arbitrament must be made of so many parts, that every person may have a part.

Arbitramentum æquum tribuit cuique suum.

An Award is commonly made by Laymen, and shall be taken according to their intent, and not in so precise a form as Grants or Pleadings, but as Verdicts; yet the substance

ſtance of the matter ought to appear either by expreſs words, or by words equivalent, or by thoſe that do amount thereunto.

But it were good that Awards were drawn up by ſome that is skilful, for the avoiding of Controverſies, which otherwiſe may ariſe about the ſame.

AGREEMENT.

An Agreement is made between the parties themſelves: there muſt be a Satisfaction made to either party preſently, or remedy for the recompence, or elſe it is but an endeavour to agree.

Tender of Money without payment, or Agreement to pay Money at a day to come, is not any ſatisfaction before the day be come, and the Money be paid. It cannot be pleaded in Bar in an Action of Treſpaſs; for that as the other party hath no means to compell the other to pay the Money, ſo he may refuſe it at the day if he will. Otherwiſe in an Arbitrament: but Money paid at a day, before the Action is brought, is a good plea.

FINIS.

A TREATISE OF Particular Estates.

Written
By Sir John Doddridge, *Knight.*

London, Printed *Anno Dom.* 1677.

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Remainder

A TREATISE OF Particular Estates.

PARTICULAR ESTATES.

A Particular Estate is such as is derived from a General Estate, by separation of one from the other: as if a man seized in Fee Simple of Lands or Tenements, doth thereof cheat by Gift or Grant an Estate Tail, or by Demise, a Lease for Life, or any Estate for Years, these are in the Donee or Lessee. Particular Estates in possession derived and separated from the Fee Simple in the De-donor or Lessor in Reversion.

Also if Lands be demised to *A* for life, the Remainder to *B* and the Heirs of his body, the

the Remainder to *C* and his Heirs, the Estate for Life limited to *A*, the Estate Tail limited to *B*, are Particular Estates derived *ut supra*, and separated in Interest from the Fee Simple: the Remainder given to *C*, albeit the same Remainder doth depend upon those Particular Estates.

And of Particular Estates some are created by agreement between the Parties, as the Particular Estates before specified; and some by act of Law, as the Estate in Tail *apres possibility de issue extinct*, Estates by the Courtesie of *England*, Dower and Wardship: for albeit an Estate in Dower be not complete untill it be assigned, which oftentimes is done by assent and agreement between Parties; yet because the Party that so assigneth the same is compellable so to do by course of Law, that Estate also is said to be created by Law. Also an Estate at will is a kind of a Particular Estate, but yet not such as maketh any division of the Estate of the Lessor, is seized; for notwithstanding such an Estate the Lessor is seized of the Land in this Demesn as for Fee in Possession, and not in Reversion.

Also an Estate at will is not such Particular Estate whereupon a Remainder may depend. But of all the Estates before mentioned,

oned, many fruitful Rules and Observations are both generally and particularly so lively set forth by the said Mr. *Littleton*, in the 1,2,3,4,5,6,7 and 8 Chapters of his first Book, which is extant as well in *English* as in *French*, whereunto I refer you.

POSSESSION.

IT is further to be observed, that all Estates that have their being are in Possession, Reversion, Remainder, or in Right; but of all these Possession is the principal. There are two degrees of the first and chiefest Possession, *In Fait Poss'*, in Law or Deed, is such as is before spoken of; and that is most proper to an Estate which is present and immediate: but yet such Possession of the immediate Estate, if it be not greater then a Term doth operate and enure to make the like Possession of the Freehold or Reversion. When a man is said to have a Term, it is to be intended for years: when it is said, a man to have the Fee of Lands, it is also to be intended a Fee Simple. Possession is that Possession which the Law it self casteth upon a man

man before any Entry or Pernancy of the profits: as if there be Father and Son, and the Father dieth seized of Lands in Fee, and the same to descend to the Son as his next Heir; in this case, before any Entry the same hath a Possession in Law. So it is also of a Reversion exportant, or a Remainder dependent upon particular estate or life: in which case if Tenant for Life die, he in Reversion or Remainder, before his Entry, hath onely Possession in Law. All manner of Possessions that are not Possessions *in fait*, are onely Possessions in Law: and it is to be observed then, if a man have a greater Estate in Lands then for years, the proper phrase of Speech is, that he is thereof seized: but if it be for years onely, then he is thereof possessed. But yet nevertheless the Substantive *Possession* is proper as well to the one as to the other.

REVERSION.

A Reversion is properly an Estate which the Law reserveth to the Donor, Grantor, or Lessor, or such like, which he doth dis-

disposse parcel of his Estate, when he doth disposse less Estate in Law then that whereof he was seized at the time of such disposition: as if a man seized of Lands in Fee doth give the same to another, and the Heirs of his body; or if he doth dismiss the same for life or years: in these cases the same reserveth the Reversion thereof in Fee to the Donor or Lessor, and his Heirs, because he departed not with his whole Estate, but onely with a particular Estate, which is less then his Estate in Fee: and such Reversion is said to be Expectance upon the particular Estate. Also if he that is but Tenant for life for Land, and doth by Deed or Parol give the same to *S* in Tail, or for term of his life, which is a greater Estate then he may lawfully dispose: in this case the Law reserveth a Reversion in Fee in such Donor, though he were formerly but Tenant for life. And the reason thereof is, for that by such unlawful disposition, which by Deed or Word cannot be without Livery and Seizin, he doth by wrong pluck out the rightful Estate in Fee, from him that was thereof formerly seized in Reversion or Remainder, and thereof by a priority of Time, gained in an instant, he was seized of a Fee Simple at the time of the execution thereof. But if a man seized

of Lands in Fee Simple, giveth the same to *A* and his Heirs, untill *B* do die without Heir of his body: in this case the Law reserveth no Reversion in the Donor, because the Estate disposed to *A* is a Fee Simple determinable, is in nature so great as the Estate which the Donor had at the time of such Gift, and consequently he departed thereby with all his Estate, and thereby an apparent difference is between a Gift made to *A* and the Heirs of his own body, and a Gift made to him and his Heirs untill *B* die without Heir of his body; for in the one case the Donor hath but an Estate Tail, and in the other a Fee Simple determinable hath a possibility of Reverter; for if *B* die without Heir of his body, then whether *A* be living or dead it shall revert to the Donor by such possibility of Reversion; for he that hath but such a possibility hath no Estate, nor hath he power to give his possibility: but in the other case the Donor hath his Estate in Fee, and therefore he hath power to dispose thereof at his pleasure.

RE-

REMAINDER.

A Remainder is a remnant of an Eſtate diſpoſed of to another at the time of Creation of ſuch particular Eſtates whereupon it doth depend: as if *S* ſeized of Lands in Fee, demiſeth the ſame to *B* for life, the Remainder to *C* and the Heirs of his body, the Remainder to *D* and his Heirs: in this caſe *S* hath a particular Eſtate of the Leſſor, it is then alſo diſpoſed to *C* and *D ut ſupra*, whereby *B* hath an Eſtate for life, *C* a Remainder in Tail, and *D* a Remainder in Fee, depending in order upon the particular Eſtate in poſſeſſion. And in every Remainder five things are requiſite.

Firſt, that it depend upon ſome particular Eſtate.

Secondly, that it paſs out of the Grantor, Donor, or Leſſor, at the time of the Creation of the particular Eſtate whereon it muſt depend.

Thirdly, that it veſt during the particular Eſtate, or at the inſtant time of the determination thereof.

Fourthly, that when a particular Eſtate is created, there be a remnant of an Eſtate left to the Donor, to be given by way of Remainder.

Fifthly, that the person or body to whom the Remainder is limited, be either capable at the time of limitation thereof, or else in *potentia propinqua*, to be thereof capable during the particular Estate. If Lands be given to *J.S.* and his Heirs, the Remainder for default of such Heir to *J.D.* and his Heirs, the Remainder is void, because it doth not depend upon any particular Estate. But if Lands be given to *J.D.* for the life of *J.D.* the Remainder to *J.B.* his Remainder is good, for it is not limited to depend upon a Fee Simple, but upon a particular Estate; which is onely called an Estate for life of *J.B.* descendable. If Lands be given to *B* for 11 years, if *C* do so long live, the Remainder after the death of *C* to *D* in Fee, this Remainder is void, for in this case it cannot pass out of the Lessor at the time of the Creation of the particular Estate for years; but if a Lease be made to *B* for life, the Remainder to the Heirs of *C*, who is then living; this Remainder is good, upon a contingency that if *C* die in the life of *B*, for the Remainder may well pass out of the Lessor presently without *Abeyance*, without any inconveniency, because onely the Inheritance separated from the Freehold is an *Abeyance*. If Lands be given for life, with a Remainder

to the right Heirs of *J.S.* and the Tenant for life dieth in the life of *J.S.* this Remainder is void, because he died not vest or settled, either during the particular Estate, or at the time of the determination thereof; for untill *J.S.* die, no person is thereof capable by the name of the Heir.

But if Lands be given to *J.S.* for term of his life, the Remainder to his right Heir, (in the singular number) and to the Heirs of his body, and after *J.S.* hath Issue a Son and dieth, that is a good Remainder, and the Son hath thereby an Estate Tail; for although it were unpossible that such Remainder should vest during the particular Estate, because during his life none could be his Heir, yet it may be and did vest at the instant of his death, which was at the time of his determination of the particular Estate.

Concerning the fourth thing: If a man seized of Lands in Fee granteth out of the same a Rent, or Common to Pasture, or such like thing, which before the Grant had no being, to *J.S.* for term of life, the Remainder to *J.D.* in Fee; this Remainder is void, because of this thing granted there was no Remnant in the Grant to dispose. And because some heretofore have been of opinion, that albeit

the ſame cannot take effect, as another Grant of a new Rent or Common; *Ut res magis valeat quàm operat.*

This is a Rule in Law, That a thing enjoyned in a ſuperiour degree, ſhall not paſs under the name of a thing in any inferiour degree. And therefore if Lands be given unto two perſons, and unto the Heirs of one of them; unto the Husband and Wife, and Heir of the Husband; and he that hath the Eſtate of Inheritance granteth the Verſion of the ſame Land to another in Fee, ſuch Grant is void, becauſe the Grantor was thereof ſeized in a ſuperiour degree, *viz.* in Poſſeſſion, and not in Reverſion, as appeareth 22 *Ed.*4. *fol.*2. & 13 *Ed.* 3. *Brook* title of Grants 137.

And concerning the firſt and laſt thing, if a Leaſe be made of Land for term of life, the Remainder to the Maior and Commonalty of *D*, whereas there is no ſuch Corporation there in being, this Remainder is meerly void, albeit the Kings Majeſty by his Letters Patents do create ſuch Corporations during the particular Eſtate; for at the time of ſuch Grant the Remainder was void, becauſe then there was no ſuch Body Corporate thereof capable, or *potentiâ propinquâ* to be created and made capable thereof during the

the particular Estate, but the possibility thereof was then forein and probably intended. The like Law is, if a Remainder be limited to *J.* the Son of *T.S.* who had then no Son, and afterwards during the particular Estate a Son is born who is named *J*, yet this Remainder is void, for at the time of such a Grant as was not to be probably intender, that *T.S.* should have any Son of that name.

Also before the dissolution of Abbies, if a Lease of Land were made to *J.S.* for life, the Remainder to one that then was a Monk, such Remainder was void for the cause before alledged, albeit we were deraigned during the particular Estate. But if such Remainder had been limited to the first begotten Son of *J. S.* it had been good, and should accordingly have vested in such a Son afterwards born during the particular Estate.

RIGHTS.

A Right in Land is either clothed or naked: a Right clothed is when it is

wrapped in a Poſſeſſion, Reverſion, or Remainder. A naked Right, which is moſt commonly called a Right, is when the ſame is ſeparated from the Poſſeſſion or Remainder by Diſſeizin, Diſcontinuance, or the deveſting and ſeparating of the Poſſeſſion; as for example, if a Leaſe of Land be made for life to *J.S.* the Remainder to *J.D.* in Fee; in this caſe *J. S.* hath a Right clothed with a Remainder. But if a ſtranger that hath no Right or Title, doth in the ſame caſe enter into the Land by wrong, and put *J.S.* out of poſſeſſion, ſuch Entry by wrong is called a Diſſeizin; and therefore the Poſſeſſion is moved from the Right by reaſon thereof, the Diſſeizor is ſeized of the Land, and *J.D.* hath alſo the like naked clothing to the Remainder by ſuch Diſſeizin, is likewiſe deveſted and plucked out of him, cannot be reveſted in him during the Right of ſuch particular Eſtate, unleſs the poſſeſſion of ſuch particular Tenement be therewith reveſted, which muſt be by his Entry or Recovery by Action; and by ſuch Entry of the particular Tenement, or by his Recovery with Execution, the Remainder ſhall be inveſted as well as the particular Eſtate. And ſo there is a Right in Goods and Chattels, as well as Lands, Tenements, and Hereditaments, which

is

is alſo clothed with a Poſſeſſion, ſo long as the rightful Proprietor hath the ſame; but if another doth take them from him by wrong, he now hath onely a naked Right to the ſame, which cannot be by him granted for the cauſe before alledged, but yet he may releaſe his Right there unto him that is thereof poſſeſſed, for the ſame reaſon that is before alledged. If a Releaſe of Right happen to be forfeited to the King, his Highneſs may grant the ſame by his Prerogative.

FINIS.

Certain Obſervations
CONCERNING
A DEED
OF
FEOFFMENT.

By T. H. *Gent.*

Cujus Poſſe eſt Velle.

London, Printed *Anno Dom.* 1677.

Certain Obſervations CONCERNING A DEED OF FEOFFMENT.

THE PREMISSES.

YOU may find in the Premiſſes, Firſt, the direct Nomination as well of the Feoffor as of the Feoffee, together with their places of Reſidence, Habitation, or Dwelling, and their Qualities, Eſtates, Additions, or Conditions. Secondly, the certain Expreſment and ſetting down of the Lands conveyed.

In Com' Norff.] *Comitatus dicitur à comitando*, of accompanying together; for generally at Aſſizes and Seſſions, thoſe of that County where ſuch Aſſizes and Seſſions are kept,

kept, use to be impanelled upon Juries, &c. for trial of Issue taken upon the fact betwixt party and party, and not those in another County: and it is a common presumption, that all persons within their Counties take notice of such things as are there publickly done; hereupon it happeneth, that where Lands, &c. lie in divers Counties, if they be conveyed by Feoffment, &c. Livery of Seizin must be made in every County, where any parcel of the Lands, &c. do lie. Otherwise it is of two parcels of Land in one and the same County. The name County is in understanding all one with Shire, which is so called from dividing, and either of them contain a certain portion of the Realm, which is parted into Counties or Shires for the better government thereof, and the more easie administration of Justice. Hence it cometh to pass, that there is no parcel of this Kingdom which lieth not within the circuit or precinct of some County or Shire. There are reckoned in *England* 41 Counties or Shires, and in *Wales* 12. The County of *Norfolk* lying Northward is so called in opposition to *Suffolk*, which lieth towards the South, each one in respect of other gaineth his Name.

The Addition given to the Feoffor, you may perceive to be *Yeoman*, the Etymology

wher-

whereof Mr. *Verstegan* fetcheth from *Gemen*, a word anciently used amongst the *Teutonicks*, which (as my Author saith) signifieth Vulgar or Common, and so the Letter *G* by corruption being turned into the Letter *Y*, we say and read *Yemen* or *Yeomen*. Others (how probably I dare not affirm) derive it by contraction from these two words, *viz. Young men*. Famous Mr. *Cambden* in his *Britannia*, after he hath reckoned up sundry Degrees both of Nobility and Gentry, rankeeth Yeomen in order next Gentlemen, naming them *Ingenuous*, in which sense I apprehend *Yeomen* to be mantioned in a certain Statute made 16 *R.*2. and in divers other Statutes. And although the Derivations of words be conveniently requir'd in the Law, and in every Liberal Science, (for *Ignoratis terminis ignoratur & ars*) yet to use the expression of a Learned Divine, though spoken in another case, *Melius est dubitare de occultis quàm litigare de incertis*; so I must leave you to your own conceit concerning the original of the word *Yeoman*, having onely set you down one or two Opinions about it: however I must not forget what Sir *Thomas Smith* saith in his *Repub. Anglorum*, who very truly and properly calleth him a Yeoman, whom the Laws of *England* call *Legalem hominem*, that

that is to say, a Freeman born: and Mr. *Lambert* in his *Eirenarcha* will excellently inform you who are, and who are not, *probi & legales homines*.

There is no special, but onely a general consideration expressed in the Feoffment, neither of which (as I conceive) is in such case absolutely material, (though I may say formal) in regard of the notoriety of Deeds of Feoffment, &c. for Livery and Seizin (as shall be said afterwards) is essentially required to make them perfect, which cannot be without the knowledge of others, besides the parties themselves; and a Feoffment doth thereby always import a free and willing consent, otherwise peradventure it might have happened in a bargain and sale, before 27 *H.*8.*cap.*16. for the better illustration whereof take this Example: You and another man agree together, that you shall give him a certain Summe of money for a parcel of Land, and that he shall make you an Assurance of it: you pay him the money, but he maketh you no Assurance; in this case although the state of the Land be still in him, nevertheless the equity *in conscientia boni viri* is with you, which equity is called the use, for which untill the 27 *H.*8.*cap.*10. there was no remedy, (as saith Sir *Francis Bacon*)

and

and that very truly, except in the Court of Chancery, but the same Statute conjoyneth and annexeth the Land and the Use together, so you by this means for the consideration have the Land it self, without any further Conveyance, which is called a Bargain and Sale. But those grave Senators and worthy Statesmen, who made the said Act of the 27 *H.*8.*cap.*10. for the transferring of Uses into Possession, wisely foreseeing that it would be very inconvenient and prejudicious, nay mischievous, that mens Possessions should upon such a sudden by the payment of a little money be transported from them, and perhaps in a Tavern or Alehouse, and upon strainable advantages) did discreetly provide in the same Parliament the said Act of 27 *H.*8.*cap.*16. that Lands,&c. upon the payment of Money as aforesaid, should not pass without a Deed indented and inrolled, as by the purport of the same Act may appear. Now seeing that before the said Act of 27 *H.*8.*cap.*16. Lands might pass by bargain and sale upon consideration, without Deed indented and inrolled, and might not pass without consideration in such manner, therefore I have heard Lawyers say, that consideration is still required in a bargain and sale, though it be by Deed indented and inrolled,

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according to the ſame Statute. Sure I am, that regularly in a Deed of Feoffment it is not ſo as formerly is declared, and for the reaſon before expreſſed.

DEDISSE.

The word *Dedi* (by force of an Act of Parliament made 4 *Ed.* 1. *c.* 4. commonly called the Statute *De Bigamis*) implieth a Warranty to the Feoffee and his Heirs during the life of the Feoffor, whereupon *Fitzherbert* in his *Natura Brevium*, *fol.* 134. *h.* puts a Caſe to this effect, *viz.* If a man give Lands to one in Fee by Deed, by the words *dedi*, *conceſſi*, *&c.* hereby he ſhall be bound to warrant the Lands of the Feoffee by vertue of thoſe words, and if the Feoffee be impleaded, he ſhall have his Writ of *Warrant. Chart.* againſt the Feoffor, by reaſon of the words *dedi*, *conceſſi*, *&c.* but not againſt his Heir, for the Heir ſhall not be bound to Warranty, except the Father bind himſelf and his Heirs to Warranty, &c. by expreſs words in the Deed. I know ſome alledge, that becauſe as well the Statute as *Fitzherbert*, mentions not onely *dedi* but *conceſſi* alſo; therefore the one without the other implieth no Warranty: to whom it may be anſwered, That

That the Statute it ſelf doth plainly prove againſt them, for the concluſion thereof hath theſe words, *Ipſe tamen feoffator in vita ſua ratione proprii doni ſui tenetur warrantizare*; and alſo the Teſtimony of Sir *Edward Coke* may be produced herein, who affirmeth that the Statute of *Bigamis*, *anno* 14 *Eliz.* in the Court of Common Pleas was expounded, as above is mentioned, namely that *dedi* did imply the Warranty: and Mr. *Perkins*, *cap.* 2. ſaith, that *dedi* in a Deed of Feoffment comprehendeth in it a Warranty againſt the Feoffor, and ſo doth not the word *conceſſi*.

CONCESSISSE.

I conceive the word *conceſſi* in Feoffments and Grants, (the implied Warranty excepted which *dedi* creates) to be of the ſame effect with *dedi*, and alſo with *confirmavi*, eſpecially in ſome caſes: to which purpoſe hear what *Littleton* ſpeaketh in his chapter of Diſcontinuance, Alſo (ſaith he) in ſome caſes this Verb *dedi*, or this Verb *conceſſi*, hath the ſame effect in ſubſtance, and ſhall enure to the ſame intent as the Verb *confirmavi*: as if I be diſſeized of a Carve of Land, and I make ſuch a Deed, *Sciant præſentes, &c. quòd dedi* to the Diſſeizor, &c. or *quòd conceſſi* to the ſaid

said Disseizor the said Carve, &c. and I deliver onely the Deed to him, without any Livery of Seizin of the Land, this is a good Confirmation, and as strong in Law as if there had been in the Deed this Verb *confirmavi, &c.*

LIBERASSE.

The word *liberavi* I take to be of the same nature with *tradidi*, which I have often seen in Feoffments, whereof it is remarkable that *Hephron* the *Hittite*, when he assured the Field of *Machphelah* to *Abraham*, *Gen.* 32. 11. used the word *trado, agrum trado tibi*, that is, to *Abraham*, as S. *Hieroms* Translation reads it.

FEOFFASSE.

This word cometh from *feudum* or *feodum*, which signifieth Fee, and is always, or for the most part used in Feoffments, as participating of the same nature.

CONFIRMASSE.

Concerning the word *confirmo* somewhat may be gathered from what hath been spoken

ken about the Verb *conceſſiſſe*, yet I cannot forget how S. *Hierom* renders the expreſſment of the ſaid aſſurance of the ſaid Field of *Machphelah* to *Abraham* for a Poſſeſſion, in theſe words, *confirmatus eſt ager, &c. Gen.* 23.17. And now I come to the ſecond thing conſiderable in the premiſſes, namely the Feoffee, whoſe Addition is *Generoſo*.

GENEROSO.

Generoſus in Engliſh we read Gentleman, which ſome derive from the two French words *Gentil Home*, denoting ſuch a one as is made known by his Birth, Stock, and Race. Sir *Thomas Smith* calleth all thoſe Gentlemen that are above the degree of Yeomen: whence it may be concluded, that every Nobleman may be rightly termed a Gentleman, *ſed non vice verſâ*. Mr. *Cowel* conceiveth the reaſon of the Appellation to grow, becauſe they obſerve *Gentilitatem ſuam*, the Propagation of their Bloud, by giving or bearing of Arms, whereby they are differenced from others, and ſhew from what Family they are deſcended.

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Hæredi & Assignatis suis.

Some will have an Heir so called *quia hæret in hæreditate*, or *quia hæret in se hæreditas:* but to let such conceits of witty invention pass, it is certain that an Heir is so called from the Latine word *Hæres.*

Littleton in his chap. of Fee Simple saith, that these words [his Heirs] onely make the Estate of Inheritance in all Feoffments and Grants, &c. sure then it is necessary for him that purchaseth Lands, &c. in Fee Simple, to have the Feoffment run to himself *& hæredibus suis*; for if it run onely to himself *& assignatis suis*, although Livery and Seizin be made accordingly, and agreeable to the Deed, yet thereby onely an Estate for Life shall pass, because there wanteth words of Inheritance: and yet without Livery and Seizin in the case aforesaid onely an Estate at Will shall pass. And the reason why the Law is so strict in this thing, (as in many others) for to prescribe and appoint such certain words to create and make an Estate of Inheritance is, (as Mr. *Plowden* saith in his Commentaries) for the eschewing and avoiding of incertainty, the very fountain and spring from whence floweth all manner of con-

confusion and disorder, which the Law utterly condemneth and abhorreth. What herein hath been said is to be apprehended and understood of persons in and according to their natural capacities. Yet perhaps an Estate of Inheritance may sometimes pass in a Deed of Feoffment by words, which may have reference and will relate to a certainty, for *Certum est quod certum reddi potest:* as for example, You enfeoff me and my Heirs of a certain piece of Land, to hold to me and my Heirs; &c. and I re-enfeoff you in as large, ample, and beneficial manner as you enfeoffed me: in this case (they say) you have a Fee Simple for the reason above expressed. So I come next to see what observations a Deed of Feoffment further affordeth.

Totam ill. pec. terræ cont.

Very necessary and convenient it is in Deeds of Feoffment, &c. to have the Lands, &c. thereby intended to be conveyed, certainly and expresly to be set down, as well how much by estimation in quantity they do contain, as the quality of the same, whether Medow, Pasture, &c. being the *species* of Land, (which is the *genus*) and the place where, and manner how, they exist and lie, the

the better to ſhun and avoid doubt and ambiguity, which oftentimes ſtir up occaſions of unkind Suits and Contentions betwixt party and party. I know that Grammarians reading the word *peciam* will be ready to ſmile, and alledge that it cannot defend it ſelf *in bello grammaticali*, which I eaſily confeſs: but what then? what can they infer from hence? will they therefore utterly condemn the uſe thereof? methinks they ſhould not, but might give Lawyers leave to ſpeak in their own Dialect. But what if ſome take exceptions at this word, having occaſion to meet with it here, what would they do ſhould they read the Volums of the Law, where inſtead of *bellum* they ſhall find *guerra*, inſtead of *ſylva* they ſhall find *boſcus*, and *ſubboſcus*, with a thouſand the like? Surely (as ſaith *Eraſmus*) they might commend or elſe condemn what they could not underſtand, or haply underſtanding, might admire from whence ſuch uncouth words ſhould proceed: for their better information (if I thought they would thank me for my labour) I could tell them that becauſe the *Saxons*, *Danes*, and *Normans*, have all had ſome hand, or at leaſt a finger in our Law, therefore through the commixion of their ſeveral Languages, it comes to paſs that ſuch

diffi-

difficult terms and harsh Latine words (if I may so call them) are frequently obvious in the Books and Writings of the Law. And indeed I see no reason why any man should object or cavil against the usage of such words, though they be not classical, seeing that as well in the Art of Logick as in Philosophy there are found many words, which they call *vocabula artis*, Vocables of Art, which cannot better stand according to the strict Rules of Grammar, then the ancient words of Law, which cannot be changed without much inconvenience.

ACRA.

Acra, in English an Acre, seemeth to come from the Latin word *ager*. An Acre is taken to be a quantity of Land containing 40 Perches in length and 4 in bredth. Mr. *Crompton* in his Jurisdiction of Courts saith, that a Perch is in some places more, and in some places less, according to the different usages in different Countries; and so then it must needs be of an Acre. But ordinarily or for the most part a Perch is accounted and esteemed to contain 16 foot and an half in length. I take it to be the same with that measure which we call a Rod or Pole. A

Perch in Law Latin is called *pertica* or *perticata*. See the Ordinance made for measuring of Land, *anno* 34 *Ed.* 3. *in Pultons Abr. tit. Weights and Measures.*

QUAREN.

Quarentena in Englifh a Furlong or Furrow long. *Firlingus* or *Firlingum* is the fame. It hath been fometimes accepted and taken for the eighth part of a mile, *anno* 35 *El.* 6. and I have read that *Firlingus* or *Ferlingus terræ continet* 32 *acras*. The Latins call it *Stadium*.

ABBUTT.

Abbutto is a Verb ufed by Lawyers to fhew how the heads of Lands do lie, and upon what other Lands or places, denoting for the more certainty what Lands, &c. are adjacent about the Lands, &c. abbuttalled. And now that I may fpeak once for all, in regard that Lawyers do ufe to abbreviate their words in writing, the reafon is not (as fome ignorantly have fuppofed) becaufe they cannot expref their terminations and endings, as they ought to be, but becaufe of the multiplicity of bufinefs which they are to go through,

through, oftentimes requiring very ſudden diſpatch. Yet I could wiſh that the cuſtom of ſhort writing *alicui ſcriptori non eſſet diſpendium*; but I fear me too many hereby take occaſion to be wilfully ignorant, which otherwiſe peradventure they would not do.

MILITIS.

Miles amongſt the Latins ſignifieth a Souldier, and in this place and the like *Miles* is to be Engliſhed a Knight, which (as Mr. *Cambden* noteth) is derived from the Saxon *Gnite* or *Cnight*. The Heralds will inform you of divers and ſundry Orders of Knights, if you pleaſe to conſult with them or their writings thereabouts. A Knight at this day is, and anciently hath been, reputed and taken for one, who for his valour and proweſs, or other Service for the good of the Commonwealth performed, hath by the Kings Majeſty, or his ſufficient Deputy on that behalf, been as it were lifted up on high, advanced above or ſeparated from the common ſort of Gentlemen. The *Romans* called Knights *Celeres*, and ſometimes *Equites*, from the performance of their Service upon Horſe back, and amongſt them there was an order of Gentility ſtyled *Ordo Equeſtris*, but diſtin-

guished from those they called *Celeres*, as several *Roman* Histories do plainly testifie. The Spaniards call them *Cavallero's*, the Frenchmen *Chevaliers*, and the Germans *Rieters*; all which Appellations evidently enough appear to proceed from the Horse, which may be some testimony of the manner of the execution of their warlike Exercises. And surely it is a very commendable policy in States to dignifie well deserving persons with honourable Titles, that others may thereby be stirred up to enterprize and undertake Heroick Acts, and encouraged to the imitation of worthy and renowned Vertues.

ARMIG.

Armiger in English signifieth Esquire, from the French *Escuier*; and perhaps an Esquire may be called *Armiger quasi arma gerens*, from his bearing of Arms. Ancient Writers and Chronologers make mention of some who are called *Armigeri*, whose Office was to carry the shield of some Nobleman. Mr. *Cambden* calls them *Scutiferi*, which seems to import as much and *homines ad arma dicti*. They are esteemed and accounted of amongst us next in Order to Knights.

CLERICI.

Clericus in Englisſh we read Clerk. It hath with us two ſundry kinds of acceptations: in the firſt ſenſe it noteth ſuch a one who by his practice and courſe of life doth exerciſe his Pen in any the Kings Majeſties Courts, or elſewhere, making it his calling or profeſſion; hereupon you ſhall find in the current of Law mention made of divers Clerks, as for example, the Clerk of the Crown, the Clerk of Aſſize, the Clerk of the Warrants, the Clerk of the Market, the Clerk of the Peace, with many others. In the ſecond ſenſe it denoteth ſuch a one as belongeth to and is imployed about the Miniſtry of the Church, that being his Function; in which ſignification it is to be taken in this place, and in the like: for I for my part did never find Clerk in the firſt ſenſe appropriated to any as an addition ſimply. We have the uſe of the word *Clericus* from *Clerus* or *Clericatus*, ſignifying the Clergy, that is to ſay, the whole number of thoſe which properly ſo called, or rather ſtrictly, are *de Clero Domini, i. e. hæreditate ſive ſorte Domini*; for *Clerus* cometh from κλήρος, a Greek word ſignifying the ſame with *ſors* in Latin, namely a Lot or Portion.

The HABENDUM.

The Office of the *Habendum* is to name again the Feoffee, and to limit the certainty of the Eſtate, and it may and doth ſome time qualifie the general implication of the Eſtate, which by conſtruction and intendment of Law paſſeth in the premiſſes: for an example whereof ſee *Bucklers* caſe in the ſecond Book of Sir *Edward Cokes* Reports, and *Throckmortons* caſe in *Plowdens* Commentaries. It is to be noted, that the premiſſes may be enlarged by the *Habendum*, but not abridged, as it plainly appeareth as well in the ſaid caſe of *Throckmorton*, as in *Worteſlies* caſe reported alſo by Mr. *Plowden*; and I have read (as my Collections tell me) that it is required of the *Habendum* to include the premiſſes. Moreover, the *Habendum* (as *W. N.* Eſq; hath it in the Treatiſe of the Grounds and Maxims of the Law) muſt not be repugnant to the premiſſes, for if it be it is void, and the Deed will take effect by the premiſſes, which is very worthy of obſervation.

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The TENENDUM.

The *Tenendum* before the Statute of *Quia emptores terrarum*, made 18 *Ed.* 1. was usually *de Feoffatoribus & Hæredibus suis, & non de capitalibus dominis feodorum, &c. viz.* of the Feoffors and their Heirs, and not of the chief Lords of the Fee, &c. whereby there happened divers inconveniencies unto Lords, as the losing of their Escheats or Forfeitures: and other Rights belonging to them by reason of their Seignories, which as the same Statute expresseth it, *durum & difficile videbatur, &c.* Whereupon it was granted, provided, and enacted, *Quòd de cætero liceat unicuique libero homini, terras suas seu tenementa sua, seu partem inde ad voluntatem suam vendere, ita tamen quòd feoffatus teneat terram illam seu tenementum illud de capitali domino feodi illius, per eadem servitia & consuetudines per quæ feoffator suus illa priùs de eo tenuit. Quæ estate fuit fait* (as saith one) *pur l'advantage del Seignior.* Which Statute was made for the advantage of Lords, and indeed I easily believe it. Now it is evident from that which hath been declared out of the said Statute, that at this day the *tenendum*, where the Fee Simple passeth, must be of the chief

Lords of the Fee, &c. for no man since the said Statute could ever convey Lands in Fee to hold of himself, out of which Rule the King onely (I think) may be excepted: and 'tis not in silence to be passed over, that where Lands, &c. are conveyed in Fee, though there be no *tenendum* at all mentioned, yet the Feoffee shall hold the same in such manner as the Feoffor held before, *quia fortis est Legis operatio*, the Statute so determines.

The Clause of Warranty, Et ego & hæredes mei, &c. warrantizabimus, &c. defendemus, &c.

Warrantizo is a Verb used in the Law, and onely appropriated to make a Warranty. *Littleton* in his chapter of Warranty saith, *que ceste parol, &c.* that this word *warrantizo* maketh the Warranty, and is the cause of Warranty, and no other word in our Law; and the argument to prove his assertion is produced from the form and words used in a Fine, as if he should say, Because the word *defendo* is not contained in Fines to create a Warranty, but the word *warrantizo* onely; *ergo, &c.* which argument deduced and drawn *à majore ad minus* is very forcible, for the greater being enabled, needs must the lesser

lesser be also enabled; *Omne majus in se continet quod minus est, & quod in majori non valet, nec valet in minori.* But certainly *Littleton* is to be understood onely of an expres. Warranty indeed, and of a Warranty annexed to Lands, for there may be and are other words which will extend and inure sufficiently to warrant Chattels, &c. and which will imply a Warranty in Law, as *dedi, &c.* and *excambium* (as I have heard say) implieth a Warranty in Law, which from *Glanvils Vel. in excambium*, or *escambium datione, l. 3. c. 1.* may receive some confirmation. And *Littleton* in his chap. of Parceners teacheth, that Partition implieth a Warranty in Law, &c. And lest some may hear say that *defendemus* stands for a cypher, I will tell them what *Bract.* declareth of it, speaking about a Warranty in Deed from the Feoffor and his heirs, whose words are these, *Per hoc autem quod dicit (scil. Feoffator) defendemus, obligat se & hæredes suos ad defendendum si quis velit servitutem ponere rei datæ contra formam donationis, &c.* Lawyers in their books make mention of three kinds of Warranties, *viz.* Warranty Lineal, Warranty Collateral, and Warranty which commences by Disseizin. The first is when one by Deed bindeth both himself and his Heirs to Warranty, and after

Death this Warranty discendeth to and upon his Heir. The second is in a transverse or overthwart line, so that the party upon whom the Warranty discendeth, cannot convey the title which he hath in the Land, from him that was the maker of the Warranty. The third and last is, where a man unlawfully entereth upon the Freehold of another, thereof disseizing him, and conveyeth it with a Warranty; but this last cannot bar at all. Of these you may read plentiful and excellent matters and examples in *Littletons* Chapter of Warranty, and Sir *Ed. Coke* learnedly commenting upon him, to whom for further illustration hereof I refer you, as also to Mr. *Cowels* Interpretation of words in the title Waranty, who there remembreth divers things very worthy observation concerning it. Before I come to the fifth part of the Deed of Feoffment, give me leave to observe that a Warranty always descendeth to the Heir at the Common Law, and followeth the Estate (as the shadow of the substance) and whensoever the Estate may, the Warranty may also be defeated, and every Warranty (as saith Sir *Ed. Coke*) which descends, doth descend to him that is Heir to him which made the Warranty by the Common Law.

And

And moreover it is to be noted, as may be gathered from what hath been formerly said, that an Heir shall not be bound to an express Warranty, but when the Ancestor was bound by the same Warranty, for if the Ancestor were never bound, the Heir shall never be charged. And I remember I have read a Case in *Br. Abr.* 35 *H.* 8. *pl.* 266. to this purpose; *Si home dit en son garranty, Et ego tenementa prædicta cum pertinentiis præfato A.B. le Donee warrantizabo, & ne dit, ego & hæredes mei il mesme garrantera, mes son heir ne sont expresse en le garrante. B. garr.* 50. So will I forbear to speak any further herein, being a very intricate and abstruse kind of Learning, requiring the Pen of a cunning and experienced Lawyer, and now I address my self to the fifth orderly or formal part of the Deed of Feoffment, the clause of *In cujus, &c.*

In cujus rei testimonium, &c.

This Clause is added as a Preparatory direction to the sealing of the Deed: for sealing is essentially required to the perfection thereof, because it doth plainly shew the Feoffors consent to, and approbation of what is

therein is contained, hereupon it will not be much devious or out of the way to make some mention of those Fashions, which in the manner of sealing and subscribing of Deeds, have been anciently used by our Ancestors. Some report that the *Saxons* in their time (before the Conquest) used to subscribe their Names to their Deeds, adding the Sign of the Cross, and setting down in the end the Names of certain Witnesses, without any kind of Sealing at all. But when the *Normans* came in, as men loving their own Country guises, they *per petit & petit* changed that custom, as also many others which they found here: and *Ingulphus*, who was made Abbot of *Croyland in anno Dom.* 1075. seemeth to confirm this opinion in these words, *Normanni cheirographorum confectionem cum crucibus aureis, & aliis signaculis sacris in Anglia firmari solitam, in cera impressa mutant.* Yet I have read of a sealed Charter in *England* before the Conquest, namely that of S *Ed.* made to the Abby of *Westminster*: yet surely this doth not altogether repugn that which hath been formerly said, for I have seen in Mr. *Fabians* Chronicle, and elsewhere, that S. *Ed.* was educated in *Normandy*, and 'tis not unlikely but he might in some things incline to their fashions. The Frenchmen have a Proverb,

verb, *Rome n'a este bastie tout en un jour*, and we in *England* use the same, namely, *Rome was not built in one day*; so it cannot be conceived that the *Normans* in an instant did alter the *Saxon* custom wholly in this particular, but that it did change by degrees, and perhaps at the first the King had some nigh unto and about him did use the Impression of a Seal, which I am somewhat perswaded to believe from a certain story which I have heard concerning *Richard de Lucy*, chief Justice of *England*, who in the time of *H.2.* is said to have chidden an ordinary man, because he had sealed a Deed with a private Seal, *quant ceo pertain al Roy & Nobilite solement*. In the days of *Ed.3.* Sealing and Seals were very usual amongst all men, for proof whereof I need not produce any other testimony but the Deeds themselves, whereof almost every man hath some. But I must remember that Sir *Ed. Coke* in the first part of his Institutions, (f.7.a.) seemeth to overthrow the former opinions about the first using of Seals in *England*; The Sealing of Charters and Deeds (saith he) is much more ancient then some have imagined, for the Charter of King *Edwin*, Brother of King *Edgar*, bearing date *Anno Dom.* 956. made of the Land called *Fecklea* in the Isle of *Ely*, was not onely sealed

ed with his own Seal, (which appeareth by theſe words) *Ego Edwindus gratiâ Dei totius Britannicæ telluris Rex meum donum proprio ſigillo confirmavi*; but alſo the Biſhop of *Wincheſter* put to his Seal, *Ego Ælſwimus Winton. Eccleſiæ divinus ſpeculator proprium ſigillum impreſſi.* And the Charter of King *Offa*, whereby he gave the *Peter* Pence, doth yet remain under Seal. The either of which two Charters are much more ancient then that of S. *Ed.* before mentioned: yet haply there may be ſome reaſon probably affirmed why as well King *Edwin* and the Biſhop of *Wincheſter*, as *Offa*, who was King of *Mercia* about the year 783, did annex their Seals to their Charters, which no King of *England* or Nobleman did before or after them, (except S. *Ed.*) untill the coming in of the Conqueror, that ever I could learn, hear, or read of, in any Author. Nevertheleſs I muſt of neceſſity leave the ſearch of ſuch reaſon to others better ſtudied in the Commentations and Alterations of Perſons, Times, and Cuſtoms, then I my ſelf; however I never heard any one deny, but that the frequent uſe of ſealing Deeds did commence in the time of *Ed.* 3. and was not ordinarily uſed amongſt private men untill then, as hath been formerly touched.

Of

Of the Date Dat'.

In this clause the Style of the King at large, the Year of his Reign, and the Year of our Lord God, according to the computation and account of the Church of *England*, together with the day of the Moneth, are expressed. In former times Deeds were often made without Date, and that of purpose, that they might be alledged within the time of Prescription, as Sir *Ed. Coke* in his said Book of Institutes (fol. 6.) very worthily observes: and moreover, that the Date of Deeds was commonly added in the Reign of *Ed.* 2. and *Ed.* 3. and so ever since, to whom I refer you, who in the place last quoted hath very excellent matter and observations thereabouts. And thus to perform what I promised, I will speak a word or two concerning Livery of Seizin, and so conclude.

Livery of Seizin.

Livery of Seizin is a Ceremony in Law used in the Conveyance of an Estate of Freehold at the least, in Lands and other things corporeal: but in a Lease for years, at will, &c. Livery of Seizin is not required, it being

ing onely a Chattel and no Freehold. By Livery of Seizin, the Feoffor doth declare his willingneſs to part with that whereof he makes the Livery, and the Feoffees acceptance thereof is thereby made known and manifeſt. The Author of the New Terms of the Law ſaith, that it was invented as an open and notorious thing, by means whereof the Common People might have knowledge of the paſſing or alteration of Eſtates from man to man, that thereby they might be the better able to try in whom the right and poſſeſſion of Lands and Tenements were if they ſhould be impannelled on Juries, or otherwiſe have to do concerning the ſame. The uſual and common manner in theſe days of delivering of Seizin I know to be ſo frequent, that of purpoſe I will omit it: but I pray you note with me before I make an end, that Livery of Seizin is of two ſorts, *viz.* Livery of Seizin in Deed, and Livery of Seizin in Law, which is ſometimes termed Livery of Seizin within the view. Livery of Seizin within the view cannot be good or effectual except the Feoffee doth enter into the Lands, &c. whereof the Livery of Seizin was made unto him in the life time of the Feoffor. And it is not to be paſſed over in ſilence, that a Livery in Law may ſometimes be perfected

fected by an Entry in Law; as if a man maketh a Deed of Feoffment, and delivers Seizin within the view, the Feoffee dares not enter for fear of death, but claims the same, this shall vest the Freehold and Inheritance in him, to which effect you may see the opinions of certain Justices, 38 *Ass. Pl.* 23. upon a Verdict of Assize in the County of *Dorc.* And I conceive that this vesting of a new Estate in the said case in the Feoffee, making his claim where he dares not enter, stands upon the same reason, for *Contrariorum eadem est ratio*, that the revesting of an ancient Estate and Right in the Disseizee doth by such claim, whereof you may read plentifully in *Littleton* his chap. of Continual Claim. It is worth the observation, that no man can constitute another to receive Livery for him within the view, nor yet to deliver (as I have heard my Master say) for none can take by force or virtue of a Livery in Law, but he that taketh the Freehold himself, *& è contra.* Otherwise it is to take and give Livery of Seizin in Deed, for there as well the Feoffee in the one case may ordain and make his Attorney or Attorneys in his name and stead to take Livery, as the Feoffor in the other case to give Livery; *Concurrentibus iis quæ in jure requiruntur.* And now let

let Delivery of the Deed to be added to the Sealing thereof, and the ſtate executing of the Lands thereby conveyed, and then I preſume none will refuſe to allow that every thing hath been named, which is eſſentially required to the perfection of a bare Deed of Feoffment; and although I have mentioned the Delivery of the Deed in the laſt place, yet it is not the leaſt thing, or of the leaſt conſequence or moment, for after a Deed is ſealed, if it be not delivered *eſt a nul purpoſe*, it is to no purpoſe, and the Delivery muſt be by the party himſelf, or his ſufficient warrant. So it may be gathered from what hath been ſaid, that ſealing of Deeds without Delivery is nothing, and that Delivery without Sealing will make no Deed, but that both Sealing and Delivery muſt concur and meet together to make perfect Deeds.

I hope ſuch as are preſent at the Sealing and Delivering of Deeds of Feoffment, and the ſtate executing thereupon, will not forget to ſubſcribe their Names or Marks, as Witneſſes thereof, whereby they may the better be enabled to remember what therein hath been done, if peradventure there ſhall be occaſion to make uſe of them. And it is not amiſs here before I end to obſerve, that al-

although upon Deeds of Feoffment, &c. it was not usual before the later end of *H.*8. or thereabouts, to endorse or make mention upon such Deeds of the Sealing and Delivering of the Deeds, or state executing of the Lands, &c. intended thereby to be conveyed, (for I my self have many Deeds of Feoffment which do testifie as much; yet it is to be credibly supposed, and not without some manifest probability, that such persons whose Names are inserted after a certain clause in such Deeds, beginning with *his testibus*, were Eyewitnesses of all. Thus desiring you to take notice, that I have called the said six parts of the Feoffment Formal, because they are not absolutely of the essence of Deeds, &c. *manebo in hoc gyro*, I will here conclude, requesting all those to whom any sight hereof shall or may happen to come, friendly to admonish me of my failings herein, whereby they shall ever engage me thankfully.

F I N I S.